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ABSTRACT

This document contains testimony from the Congressional hearing on the impact of crime on the elderly. Following a brief introduction to the President's Task Force on Victims of Crime, and the Victim and Witness Protection Act of 1982 by Senator Grassley, testimony is given by Congressional and nondepartmental witnesses. Senator Heinz's prepared statement on crime and the elderly and the proposed Crime Victim Assistance Act of 1983 is provided. Representatives of the Department of Justice present testimony on the Department's implementation of the Victim and Witness Protection Act and the proposed 1983 legislation. The American Bar Association's views on victim compensation and the proposed 1983 legislation are given, including the contents of the Uniform Crime Victims Reparations Act. An analysis of American programs of victim compensation is given by the Center for Criminal Justice, Harvard Law School. Representatives of the New York State Crime Victims Board and the Iowa Department of Public Safety present their views on the incidence of crime and the elderly, specific conditions of the elderly which may lead to victimization, compensation programs, particularly in Iowa, and the government's role. Representatives of the National Organization for Victims Assistance and the American Association of Retired Persons present testimony on victim assistance and the elderly in respect to eight service stages, from injury through post-sentencing of the criminal. (BL)

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IMPACT OF CRIME ON THE ELDERLY

ED245162

HEARING

BEFORE THE

SUBCOMMITTEE ON AGING

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

EXAMINING THE IMPACT OF CRIME ON THE ELDERLY, FOCUSING ON FEDERAL ASSISTANCE TO HELP STATES COMPENSATE VICTIMS OF CRIME, AND TO REVIEW IMPLEMENTATION OF THE VICTIM AND WITNESS PROTECTION ACT OF 1982 (PUBLIC LAW 97-291)

JUNE 28, 1983

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IMPACT OF CRIME ON THE ELDERLY

TUESDAY, JUNE 28, 1983

U.S. Senate,
Subcommittee on Aging,
Committee on Labor and Human Resources,
Washington, D.C.

The subcommittee met, pursuant to notice, in room SD-430, Dirksen Senate Office Building, commencing at 10:06 a.m., Senator Charles E. Grassley (chairman of the subcommittee) presiding.

Present: Senators Grassley and Hawkins.

Opening Statement of Senator Grassley

Senator **Grassley**. I will call the meeting and this hearing of the Subcommittee on Aging to order. I have a short statement before we call the witnesses. I want to thank everybody for participating.

As we all know, crime can strike anyone but most frequently it affects the poor, the young, the very old, and residents of the inner cities—precisely those persons who are least able to protect themselves. We are ever mindful of the serious toll that crime is exacting in our communities and we cannot turn away from that problem.

The idea that a society should aid those who are victimized by crime is not new. Dated 2038 B.C., the Babylonian Code of Hammurabi, provided that when a person was robbed or murdered, he or she or the heirs, were entitled to compensation for their losses. But today's system has lost touch with this commonsense notion through its legalistic insistence on separating civil and criminal remedies. We punish criminals—sometimes—but we leave the victim to his own devices in seeking tort compensation.

We squire a suspect through the process: Provide a free lawyer, food and housing, physical and psychiatric treatment, job training, support for the family, counsel on appeal. But the victim often gets no help—and even worse, is victimized again by an insensitive judicial system which demands his or her full-time participation for the minor comfort of a conviction.

On April 15, 1982, President Reagan assembled a task force to find out why our system treats victims so dismally. The final report of the President's Task Force on Victims of Crime was released last December. By combining discussions with law-abiding citizens whose lives have been shattered by lawlessness, the task force has produced an outstanding resource on this subject.

The report outlines an agenda for governmental and organizational action to alleviate the suffering of those afflicted by crime.

For example, the report illustrates the physical consequences unique to older victims. One elderly victim testified and I quote:

> I am a senior citizen but I never considered myself old. I was active. I was independent. Now I live in a nursing home and sit in a wheelchair. The day I was mugged was the day I began to die.

If the victim is lucky, the perpetrator of the crime may receive a sentence. But as this example aptly illustrates, the victim may be sentenced to a lifelong ordeal of pain.

Gradually our perception of the criminal justice system has been changing. In the last Congress, for example, we finally recognized that all too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship, first as a result of the criminal act and then as a result of contact with a criminal justice system that calls it a day after the case is dismissed or the criminal is put away.

The Victim and Witness Protection Act of 1982 provides a ray of optimism in the Federal criminal system. Restitution is required for the first time. There may be revocation of bail in certain circumstances—another first. Victim impact statements are required. This means that prior to sentencing the judge will know the financial, medical, social, and psychological effects of the victim prior to sentencing. While these steps are marked improvements, it goes without saying that we have much yet to accomplish.

Today's hearing will hopefully build on the outstanding foundation laid by the President's task force, assessing where we are in terms of victim assistance and in which directions we should advisedly move. We have an outstanding array of witnesses and I look forward to hearing from them.

We will proceed according to the order printed, with the exception of Senator Heinz, who right now [and I just came from that meeting because I am also a member of the Select Committee on Aging] is holding a hearing on the efficacy of drugs and the overuse of drugs by senior citizens. He will likely have to come in late to testify before my subcommittee, and I told him that we would interrupt whoever was testifying so that he would not be away from his own committee for too long of a period of time.

With that in mind, I will skip Senator Heinz momentarily and go to Jay Stephens, who is originally from my State of Iowa and came to Washington to take his present position. Lois Haight Herrington will testify as well. I am acquainted with Mr. Stephens because his father was in the State legislature when I was in the State legislature and had an opportunity to know the family for a long time. Jay Stephens is Deputy Associate Attorney General of the U.S. Department of Justice, a native of my own State, as I said. Following his assignment as Assistant Special Prosecutor in the Watergate investigation and 5 years prosecuting cases as assistant U.S. attorney for the District of Columbia, he has been responsible for a wide range of criminal policy issues in the Justice Department.

Lois Haight Herrington comes to us after chairing the President's Task Force on Victims of Crime and I want to congratulate her for her important contribution to this effort and of course thank both of you for participating.

So would you both come forward at this time, please.

We will now receive a statement from Senator Heinz.

[The prepared statement of Senator Heinz follows:]

Statement by Senator John Heinz
Before the Senate Sub-committee on Aging
Crime and the Elderly
June 28, 1983

Mr. Chairman, I am pleased to appear before you today to testify on behalf of my legislation and on behalf of crime victims across the nation. It is always a pleasure for me to be in the distinguished company of Lois Herrington, who was Chairman of the President's Task Force on Victims of Crime, and to appear with the National Organization of Victims Assistance, which has worked so effectively in the promotion of victims rights.

As Chairman of the Senate Special Committee on Aging, I have long been aware that the fear of crime and the impact of an assault have an especially traumatic impact upon older Americans. What is not so widely recognized is the negative impact of a victim's experience after a crime has occured.

The President's Task Force on Victims of Crime, in its report to the Congress earlier this year, concluded that the treatment of victims by our criminal justice system has been careless and shameful. In many cases, the criminal has received more consideration and fairer treatment than the innocent individual he has victimized. In the words of the Task Force, "Innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds -- personal, emotional, and financial -- have gone unattended." Last year, Senator Laxalt and I hoped to balance this injustice when we introduced the

Victim and Witness Protection Act of 1982. That bill was signed into public law by the President last October. It is the first major federal legislation which recognizes the rights and needs of victims. The swift passage of this legislation has given hope to victims across the country. Many victims advocacy groups are now working for passage of parallel legislation at the state level.

But we need to do more. The financial impact of a crime can be devastating to an older person on a fixed income. Some say that restitution should be required - simply make the criminal pay for the consequences of his crime. But sadly, relatively few criminals are caught and convicted, and fewer still can be made to pay restitution. To address this problem, 36 states plus the District of Columbia have established victims compensation programs. Unfortunately, virtually of these state crime victims compensation programs are experiencing financial difficulties. Many states are being forced to limit the amount of their compensation awards. Others do not advise victims of their existence for fear of depleting available resources or overtaxing numerically inadequate staff. In addition, because of the funding problems in many states, victims may have to wait months before the compensation claim can be processed.

Mr. Chairman, early this year I, with your co-sponsorship introduced S. 704 - the Crime Victim Assistance Act of 1983 -

WHICH WOULD ESTABLISH A FEDERAL CRIME VICTIMS ASSISTANCE FUND TO HELP STATES COMPENSATE VICTIMS OF CRIME. IT WOULD PROVIDE TECHNICAL SUPPORT FOR THOSE REMAINING STATES WHICH DECIDE TO ESTABLISH VICTIMS COMPENSATION PROGRAMS. IN ADDITION, THE LEGISLATION WOULD PROVIDE MUCH-NEEDED FINANCIAL SUPPORT FOR STATE AND FEDERAL VICTIM'S AND WITNESS ASSISTANCE PROGRAMS. THIS SUPPORT IS ESSENTIAL IF WE ARE TO FULLY IMPLEMENT THE PROVISONS OF THE VICTIM AND WITNESS PROTECTION ACT PASSED LAST YEAR.

REVENUE FOR THESE PURPOSES WILL BE GENERATED FROM SOURCES RELATED TO THE COMMISSION OF THE CRIME - SUCH AS INCREASED FINES, CRIMINAL FORFEITURES, IMPROVED COLLECTION PROCEDURES, AND A SPECIFIC ONE-TIME COMPENSATION FEE TO BE LEVIED AT THE TIME OF SENTENCING ON ALL FEDERAL CRIMES. IT WILL NOT REQUIRE A SINGLE PENNY OF NEW REVENUE FROM THE TAXPAYER.

MOST ELDERLY PEOPLE CAN NOT ABSORB THE FINANCIAL IMPACT OF A CRIME. THEY RARELY INVEST IN INSURANCE WHICH IS OFTEN A FALL-BACK FOR YOUNGER, WORKING INDIVIDUALS. THUS, THEY ARE INNOCENTLY VICTIMIZED, AND THAN LEFT TO PAY FOR MEDICAL EXPENSES, THERAPY, OR POSSIBLY FUNERAL EXPENSES ON THEIR OWN. COMPENSATION PROGRAMS VARY FROM STATE-TO-STATE, BUT MOST COMPENSATE FOR MEDICAL, COUNSELING, AND THERAPY EXPENSES ASSOCIATED WITH THE CRIME. MOST OF THESE PROGRAMS ALSO REIMBURSE FOR LOST WAGES, LOSS OF SUPPORT TO DEPENDENTS AND FUNERAL EXPENSES. I BELIEVE THAT IT IS TIME FOR THE FEDERAL GOVERNMENT TO ENSURE THE AVAILABILITY OF ADEQUATE FUNDS TO SUPPORT THESE PROGRAMS SO THAT FINANCIAL REIMBURSEMENT TO INNOCENT VICTIMS CAN BE MADE.

WITHOUT THE COOPERATION OF VICTIMS, THE CRIMINAL JUSTICE SYSTEM WOULD COLLAPSE LAST YEAR WE BEGAN TO RECOGNIZE THEIR NEEDS. I BELIEVE THIS YEAR IT IS TIME WE COMPLETE OUR RESPONSIBILITY BY ENACTING COMPREHENSIVE VICTIMS COMPENSATION LEGISLATION. THANK YOU.

Senator **GRASSLEY**. Jay, I am going to ask you to go first, please. Then I will also want to hear from you, Mrs. Herrington, before we ask questions, but I do have some questions for both of you. So go ahead, Jay.

STATEMENT OF JAY STEPHENS, DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY LOIS HAIGHT HERRINGTON, ASSISTANT ATTORNEY GENERAL

Mr. **STEPHENS**. Thank you, Mr. Chairman. It is indeed a pleasure to be here today to discuss with you the Department of Justice's implementation of the Victim Witness Protection Act of 1982 that was passed by the Congress in this past session and signed by the President in October.

As the chairman so aptly noted, this legislation is a milestone in the continuing effort to insure that victims and witnesses of criminal offenses are given the level of attention and consideration which they deserve. For too long our legal system has ignored the devastating psychological, emotional, physical, and financial impact which crime can have upon a victim and it has focused instead all its attention upon insuring that every concern of the accused is accommodated.

Similarly, witnesses to offenses too often have been treated with disregard and indifference, even though they frequently make great personal sacrifices to do an important civic duty.

The impact of crime is especially traumatic with respect to our elderly citizens. I know that is of particular concern to the chairman of this subcommittee. I would like to take a moment to focus on some of those special concerns of the elderly. Although the actual incidence of crime may be less with respect to our elderly citizens, the overall impact which crime has on this group is traumatic. The sense of vulnerability among many of our elderly exacerbates their fear of crime which in turn results in a significant alteration of their life style. When a purse is snatched or a home burglarized, the elderly person frequently experiences great fear even though no violence may have resulted. Indeed, the pervasive fear of crime suffered by the elderly has been identified in one nationwide survey to be a more serious personal problem than poor health, loneliness, lack of financial resources and other such problems frequently associated with the aging process.

This fear of crime of the elderly is an indirect form of victimization since it can lead to serious restriction on the elderly's daily activities and can significantly impoverish their lifestyle.

Furthermore, the elderly are more susceptible to crime that involves economic loss, and economic loss may be particularly disturbing to the person who is on a fixed income as many of our elderly people are. The inescapable conclusion of victimization studies is that indeed the trauma and economic impact of crime weigh much more heavily upon our elderly citizens.

The Victim and Witness Protection Act passed by Congress last session is, of course, designed to benefit all of our citizens who may suffer the tragedy of being a crime victim or who step forward to do their civic duty when they are a witness to a criminal offense.

The act contains a number of provisions, each of which is designed to provide a particular type of assistance to victims and witnesses.

I would like this morning to address the most significant aspects of that legislation and to advise the subcommittee of the status of the implementation of that act by the Department of Justice.

In particular, I would like first to discuss our effort to implement those provisions of the act which deal with the victim impact statement, the obstruction of justice statute, and restitution provisions, and then to review the status of the guideline mandated by section 6 of the Witness Victim Protection Act.

As the chairman pointed out in his opening statement, one of the most significant aspects of the new Victim and Witness Protection Act is section 3 which requires the inclusion of a victim impact statement as part of the presentence report filed pursuant to rule 32(c)(2) of the Federal Rules of Criminal Procedure.

Prior to the enactment of this act, the general practice of the probation officer and the courts was to rely on a presentence investigation that generally focused upon the defendant's family, social, economic, and criminal background. While most presentence reports included a small section on the official version of the offense, they did not specifically address the questions of the physical, the economic, the psychological trauma suffered by the victim or the victims of the offense. Consequently, a sentencing court, particularly in a case that was disposed of by a plea where the victim did not have an opportunity to come before the court, did not always have a complete picture or an accurate picture of the impact which the offense had upon the victim.

Now, the Victim and Witness Protection Act requires that presentence investigations include an appropriate section describing the impact of that offense upon the victim. The act mandates that this be provided as part of the presentence report of rule 32(c)(2); consequently, the primary burden of this falls upon the probation office, since they are the office that prepares this report and since, as the legislation points out, the Congress wanted a neutral party to present this evidence to the court.

Nonetheless, the prosecutor has an important obligation, we believe, to assist the probation office in obtaining a complete and accurate information picture regarding the impact of the crime on the victim, since frequently the prosecutor or the investigator handling the case may have more ready access to this evidence at an early stage of the investigation. Moreover, we believe the prosecutor has a responsibility to advise the victim about communicating with the probation office, in order to insure that the probation officer talks with the victim and obtains the necessary information to complete the victim impact statement.

And, in the last analysis, where courts permit, the prosecutor should be a vigorous advocate for the victim at the time of sentencing to insure that the court is fully cognizant of the extent of the injuries suffered by the victim. We have preliminarily advised our prosecutors of their obligations with respect to the victim impact statements and I fully expect the formal guidelines which will be issued by the Department of Justice shortly will address that issue and underscore the investigative agents' and prosecutors' responsibility of assisting the probation office in bringing this very important information to the attention of the sentencing judge.

With respect to section 4 of the new act which involves obstruction of justice and witness tampering provisions, we have made a comprehensive analysis of these new statutes and the important changes which are entailed in this legislation. We have communicated to the U.S. attorneys as well as to our attorneys in the Department of Justice the important changes in the obstruction of justice laws and have provided them with detailed guidance on the application of these provisions.

The Department, of course, views these changes in the obstruction statutes as significant improvements for the protection of witnesses who may be threatened or intimidated, and we have encouraged our prosecutors to utilize these new provisions vigorously to prosecute any individual who interferes with or intimidates witnesses to criminal offenses.

There are a number of significant changes in the law which I would like to point out very briefly. Section 4 provides for a civil injunctive remedy to restrain harassment of witnesses and, as the chairman pointed out, section 8 of the act includes a provision that makes nonviolation of the intimidation and harassment statutes a condition of any release on bail.

Equally important, punishment for violation of the new obstruction statutes now extends to 10 years imprisonment and a fine of up to $250,000. And, more importantly, the new provisions now cover the intimidation of a witness even though a formal case has not yet been filed. The Criminal Division of the Department of Justice has maintained ongoing supervision of these statutes to provide the necessary advice to our prosecutors and to resolve issues which may arise in the application of these new statutes. We expect these statutes to be an important tool in providing witnesses the kind of security from intimidation that they deserve.

Section 7 of the new act requires that the Attorney General report to Congress within a year of enactment of the act regarding necessary legislation to insure that a Federal felon derives no profit from his crimes until any victim of his offenses receives restitution.

I would advise the subcommittee that the Department currently has this issue under consideration and will report to the Congress its recommendations on this matter in the next few months.

The Department currently is finalizing detailed instructions to all our criminal prosecutors regarding the important restitution provisions of the act. Very significantly, section 5 of the act requires, as the chairman pointed out, that a sentencing court specifically consider the issue of restitution and to state on the record any reasons for failing to impose restitution.

In addition, the court is authorized under this new legislation to impose a sentence of both restitution and incarceration, a change from the previous law. And it also provides for a civil judgment enforcement mechanism for victims awarded restitution.

The issue of restitution for criminal offenses raises a number of difficult legal and administrative issues which we have been attempting to resolve. As I noted previously, we are finalizing a set of instructions to our prosecutors, and we anticipate that within the next 30 to 60 days we will have detailed instructions to them to assist them in dealing with some of the very difficult questions.

The restitution issue has raised concerns among participants in the criminal justice system regarding the process by which restitution is imposed and the procedures which must be followed. Many of these issues surfaced in a nationwide teleconference that we had this spring that involve members of the bench, probation officers, defense counsel, and Federal prosecutors.

Also within the prosecutors' offices concerns have been raised regarding the resolution of certain restitution issues; for example, in Federal prosecutions we may have prosecutions of major securities fraud schemes, where there are many victims, and may end up with a disposition involving a limited number of those indicted counts. Consequently, there may be some victims' counts that either were not charged or were dismissed as part of a plea disposition; thus, these victims may not obtain restitution.

In addition, we need to be vigilant regarding the procedures employed in imposing restitution so as to avoid unduly encumbering the sentencing process. As I have noted previously, however, we have encouraged our prosecutors, consistent with their overall prosecutorial obligations, to press for restitution in all appropriate cases and to assist the probation office in developing documentation and evidence of injury suffered by a victim.

Restitution through the criminal process at best may provide only a partial solution, however, to compensating victims of crime. In many cases there are victims of crimes for which no one is apprehended or convicted, and consequently, restitution in those circumstances is, of course, totally unavailable.

In other circumstances where the perpetrator is convicted, he may be unable to pay. In many cases a convicted defendant may be incarcerated for a substantial number of years and the payment to a victim may be delayed for many years. In still other circumstances as I noted above, a victim may be one of several victims of a complex scheme in which a defendant has engaged, but may not receive restitution because of a particular disposition in that case. The limitations on the effectiveness of restitution through the criminal process suggest that additional thought should be given to other types of victim compensation programs. I know that this has been of particular concern to the chairman of the subcommittee who previously introduced S. 704, a bill to provide Federal financial assistance to qualifying State victim compensation funds and victim and witness assistance programs.

Similarly, as the subcommittee will hear shortly, the President's Task Force on Victims of Crime addressed this problem and made a number of recommendations regarding victim compensation programs and the critical role they can play in making victims whole again.

The Department of Justice currently is doing an in-depth study of all of the task force proposals, including the proposal for a victim compensation program, to determine what legislative proposals, if any, merit support.

Finally, I would like to take a few moments to discuss with you the status of the victim and witness guidelines which are mandated by section 6 of the act. These guidelines entail a significant administrative directive to Department of Justice components to insure the delivery of victim services and assistance contemplated by the act. Section 6 of the act directs the Attorney General to issue within 270 days of enactment guidelines for the fair treatment of victims and witnesses in the Federal criminal justice system. I can report to the subcommittee that since the enactment of this act, hundreds of hours have been devoted to drafting, reviewing, and perfecting guidelines covering Federal prosecutors and investigators within the Department of Justice, and that these draft guidelines are now undergoing final review prior to issuance by the Attorney General in early July. I would like to emphasize that my comments regarding these guidelines today of necessity reflect only the general outlines, since they are still in draft form; my comments reflect the general outlines which I anticipate they will take, although even these outlines are still subject to modification.

Senator **GRASSLEY**. Would you be able to summarize the last four pages? I should have probably suggested to all the witnesses the necessity of summarizing because we will have the entire text of everybody's statement put in the record, if that is your desire. I request you to summarize so that we can stay within 10 minutes per witness.

Mr. **STEPHENS**. The guidelines will address the components of the Department of Justice and provide them with guidance on providing information on services that are available to victims and witnesses. It will direct them in certain circumstances to advise victims and witnesses regarding various stages of the criminal justice process affecting their case. It will require that they consult with the victim during various important stages in the process, such as disposition and release on bond. And it will involve some training for components of the Department of Justice to insure that they are aware of the obligation which this act imposes upon them.

We anticipate that it will take some time to develop the necessary community resources, to develop the operational structure and the mechanisms for the delivery of the services, but we are committed to these guidelines and to delivery of these services to victims.

In summary, I would like to emphasize that the Department has pursued aggressively the implementation of the new legislation and is committed to continuing its effort in an efficient and expeditious manner. While the act imposes significant new obligations and responsibilities upon the Department, we believe that fulfillment of these obligations will result not only in substantial benefits to victims of crime, but ultimately will redound to the benefit of the entire criminal justice system.

That completes my statement, Mr. Chairman. I appreciate the opportunity to appear before the subcommittee today

If you have any questions I would be happy to answer them.

[The prepared statement of Mr. Stephens follows:]

STATEMENT OF

JAY B. STEPHENS
DEPUTY ASSOCIATE ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON AGING
UNITED STATES SENATE

CONCERNING

THE VICTIM AND WITNESS PROTECTION ACT OF 1982

ON

JUNE 28, 1983

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to be here today to discuss with you the Department of Justice's implementation of the Victim and Witness Protection Act of 1982 which was passed by the Congress last session and signed by the President in October. This legislation is a milestone in the continuing effort to ensure that victims and witnesses of criminal offenses are given the level of attention and consideration they deserve. For too long our legal system has ignored the devastating financial, emotional, and physical impact which a criminal offense can have upon the victim, and has focused all its attention instead upon ensuring that every concern of the accused is accommodated. Similarly, witnesses to offenses too often have been treated with indifference and disregard, even though they frequently make genuine personal sacrifices to do an important civic duty.

The impact of crime is especially traumatic with respect to elderly crime victims who I know are of particular concern to this Subcommittee. I would like to take a moment to focus on those special concerns of the elderly. Although the actual incidence of crime may be less with respect to our senior citizens, the overall impact of crime on this group is dramatic. The sense of vulnerability among many elderly people magnifies their fear of crime which in turn results in a significant alteration of their lifestyle. When a purse is snatched or a home burglarized, the elderly person frequently experiences great fear even though no physical injury results. Indeed, the pervasive fear of crime suffered by the elderly has been identified in one nationwide survey as a more serious personal problem than poor health, lack of financial resources, loneliness, and many other complaints frequently associated with advancing age. This fear of crime is an indirect form of victimization since it can lead to serious restrictions on the elderly's daily activities and can significantly impoverish their lives. Furthermore, the elderly appear to be more susceptible to crime that is motivated by economic gain, and the economic loss involved may be particularly disturbing to a person on a fixed income, as many of our elderly are. The inescapable conclusion of victimization studies is the realization that the trauma and economic impact of crime weigh more heavily upon the elderly.

The Victim and Witness Protection Act is, of course, designed to benefit all our citizens who may suffer the tragedy of being a crime victim or who step forward to do their civic duty when they are a witness to a criminal offense. The Act contains a number of provisions each of which is designed to provide a particular type of assistance to victims and witnesses. I would like to address the most significant aspects of this legislation, and to advise the Subcommittee of the status of our implementation of this Act. In particular, I would like first to discuss our efforts to implement those provisions of the Act which relate to victim impact statements, obstruction of justice offenses, and restitution, and then to review the status of the guidelines mandated by Section 6 of the Act.

One of the most significant aspects of the new Victim and Witness Protection Act is Section 3 which requires the inclusion of a victim impact statement as part of a presentence report filed pursuant to Rule 32(c)(2) of the Federal Rules of Criminal Procedure. Prior to the enactment of this Act, the general practice of probation officers and the courts was to rely upon a presentence investigation which focused substantially upon the convicted defendant and his or her particular family, social, economic, and criminal background. While most presentence reports included a brief official version of the offense, they did not specifically address the physical, economic, and psychological trauma suffered by the victim or victims of the offense. Consequently, a sentencing court, particularly in a case where the court was not exposed to the victim because the case was resolved by plea disposition instead of a trial, did not always have a complete or accurate picture of the impact of the offense upon the victim.

The Victim and Witness Protection Act requires that effective March 1, 1983, presentence investigations include an appropriate section describing the impact of the offense upon the victim. Since the Act mandates that this information be filed with the court pursuant to Federal Criminal Rule 32(c)(2) as part of the presentence report, the primary obligation to ensure that the information on victim impact is brought before the court rests with the probation office. Nonetheless, the prosecutor has an important obligation to assist the probation office in obtaining complete and accurate information regarding the impact of the crime on the victim since frequently the prosecutor or investigator may have more ready access to this evidence at an early stage of the investigation. Moreover, the prosecutor has a responsibility to advise the victim about communicating with the probation office. And, in the last analysis, where courts permit, the prosecutor should be a vigorous advocate for the victim at the time of sentencing to ensure the court is fully cognizant of the extent of injury suffered by the victim. We have preliminarily advised our prosecutors of their obligations with respect to victim impact statements, and I fully expect that the formal guidelines which will be issued by the Department shortly will address this issue and underscore the investigative agent's and prosecutor's responsibility of assisting the probation office in bringing this very important information to the attention of the sentencing judge.

With respect to Section 4 of the Act which involves obstruction of justice and witness tampering provisions, we have made a comprehensive analysis of these new statutes and the important changes entailed in this legislation. We have communicated to the United States Attorneys in the field as well as to Department of Justice attorneys the important changes in the obstruction of justice laws and have provided them with detailed guidance on the application of these provisions. The Department, of course, views the changes in the obstruction statutes as significant improvements for the protection of witnesses who may be threatened or intimidated, and we have encouraged our prosecutors to utilize the new provisions vigorously to prosecute any individuals who interfere with or intimidate witnesses to criminal offenses.

Significantly, Section 4 of the Act provides for a civil injunctive remedy to restrain harassment of witnesses, and Section 8 of the Act makes non-violation of these intimidation and harassment statutes a condition of any release on bail. Equally important, punishment for violation of the new obstruction statutes now extends to ten years imprisonment and a $250,000 fine, and the new provisions cover the intimidation of a witness even though a case has not yet been formally filed. The Criminal Division of the Department has maintained ongoing supervision of these statutes to provide necessary advice to prosecutors and to resolve issues which may arise in the application of these new statutes. We expect these statutes to be an important tool in providing witnesses the kind of security from intimidation that they deserve.

Section 7 of the new Act requires that the Attorney General report to Congress within a year of enactment of the Act regarding necessary legislation to ensure that a federal felon derives no profit from his crimes until any victim of his offenses receives restitution. The Department currently has this issue under consideration, and will report to the Congress its recommendations on this matter in the next few months.

The Department currently is finalizing detailed instructions to all our criminal prosecutors regarding the important restitution provisions of the new Act. Significantly, Section 5 of the Act requires a sentencing court specifically to consider the issue of restitution, and to state on the record any reasons for failing to impose restitution. In addition, the Act gives the court authority to impose a sentence of both restitution and incarceration, and it provides for a civil judgment enforcement mechanism for victims awarded restitution. The issue of restitution for criminal offenses raises a number of difficult legal and administrative issues which we have been attempting to resolve. As noted, we are finalizing a set of instructions to our prosecutors, and anticipate that within the next 30 to 60 days, we will have detailed instructions to them to assist them in dealing with some of these very difficult questions.

The restitution issue has raised concerns among participants in the criminal justice system regarding the process by which restitution is imposed and the procedures which must be followed. Many of these issues surfaced in a nationwide teleconference hookup this Spring which involved members of the bench, probation officers, defense counsel, and federal prosecutors. Within prosecutors offices, concerns have been raised regarding the resolution of certain restitution issues; for example, where there are multiple victims in a major securities fraud scheme, and where there may be a plea disposition involving a limited number of indicted counts, victims of counts that are not charged or which are dismissed as part of the disposition may not receive restitution. In addition, we need to be vigilant regarding the procedures employed in imposing restitution so as to avoid unduly encumbering the sentencing process. As I noted previously, however, we have encouraged our prosecutors consistent with their overall prosecutorial responsibilities to press for restitution in all appropriate cases, and to assist the probation office in developing documentation and evidence of injuries suffered by a victim.

Restitution through the criminal process at best may provide only a partial solution to compensating victims of crime. In many cases there are victims of crimes for which no one is apprehended or convicted, and consequently, restitution from the defendant is totally unavailable. In other circumstances where the perpetrator is convicted, he may be unable to pay. In many cases a convicted defendant may be incarcerated for a substantial period of time, and any payment to a victim may be delayed for many years. In still other circumstances as noted above a victim may be one of several victims of a complex scheme in which a defendant has engaged, but may not receive restitution because of a disposition which involves a limited number of counts. The limitations on the effectiveness of restitution through the criminal process suggest that additional thought should be given to other types of victim compensation programs. I know that this issue has been of particular concern to the Chairman of this Subcommittee who previously introduced S. 704, a bill to provide federal financial assistance to qualifying state victim compensation funds and victim and witness assistance programs. Similarly, the President's Task Force on Victims of Crime addressed this problem, and made a number of recommendations regarding victim compensation programs and the critical role they can play in making victims whole again. The Department of Justice currently is doing an indepth study of all of the Task Force proposals, including the proposal for a federal victim compensation program, to determine what legislative proposals, if any, merit support.

Finally, I would like to discuss with you the status of the victim and witness guidelines which are mandated by Section 6 of the Act. These guidelines entail a significant administrative directive to Department of Justice components to ensure the delivery of victim services and assistance contemplated by the Act. Section 6 of the Act directs the Attorney General to issue within 270 days of enactment guidelines for the fair treatment of victims and witnesses in the federal criminal justice system. I can report to the Subcommittee that since the enactment of this Act, hundreds of hours have been devoted to drafting, reviewing, and perfecting guidelines covering federal prosecutors and investigators within the Department, and that these draft guidelines are now undergoing final review prior to issuance by the Attorney General in early July. I emphasize that the proposed guidelines are still under final review, and that, therefore, my comments regarding them of necessity reflect only the general outlines which I anticipate they will take, and that even these outlines are still subject to modification.

The guidelines which the Department expects to issue shortly will apply to all those components of the Department of Justice which are engaged in the detection, investigation, and prosecution of crimes; responsibility for the delivery of services or the provision of consultation and information will be assigned based upon the stage of development of a particular investigation. In general, the guidelines will incorporate both the victim assistance concepts set out in Section 6 of the Act and a number of recommendations of the President's Task Force on Victims of Crime regarding the fair treatment of victims and witnesses. In particular, I expect the guidelines will require that crime victims and witnesses be provided with information about various services, including the availability of emergency medical and social services, compensation for which the victim may be entitled, and the availability of various counseling and treatment facilities. In addition, I anticipate the guidelines will require the responsible Department component to keep a victim or witness fully advised of the various stages of the criminal justice process involving his case; victims and witnesses of serious crimes will be advised of steps that can be taken to protect them from intimidation, of the arrest of the accused, of court scheduling changes, of the release of the accused from custody, of an acceptance of a disposition in the case, of the victim's role in preparation of the victim impact statement, and of sentencing procedures, among others.

Furthermore, I anticipate that the guidelines will direct responsible components, whether they be investigators or prosecutors, to consult with victims of serious crimes regarding significant stages of their criminal case. In particular, I expect Department personnel will be instructed to consult with a victim about, among other things, release of an accused pending further judicial proceedings, decisions regarding dismissal of charges, plea negotiations, sentencing recommendations, and restitution which may be available.

With respect to the victim impact statement which I discussed previously, I anticipate that the guidelines will direct Department personnel to cooperate fully with the appropriate probation officer by providing all relevant information in the possession of the prosecutor to assist in the preparation of an accurate and comprehensive victim impact statement. Also, the victim will be advised regarding how to communicate directly with the probation officer in order to assist in the preparation of a victim impact statement. With respect to restitution, as I discussed earlier, the guidelines will direct federal prosecutors to advocate fully the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding or unless such advocacy would be inconsistent with their other responsibilities as prosecutors.

Finally, I anticipate that the guidelines will provide for training of personnel concerning their new responsibilities under the guidelines and the Victim and Witness Protection Act. The task of ensuring that all Department personnel who are involved in the investigative and prosecutorial aspects of the federal criminal system are fully apprised of their additional responsibilities under this Act and that they understand how to deal with those new obligations is, of course, not an easy task. I expect that following the issuance of the guidelines by the Attorney General in early July, the various field components, including United States Attorneys and the investigative agencies, will need a period of time in which to develop compliance procedures and mechanisms. During the next few months, responsible components of the Department will resolve operational problems, gather additional data regarding available community resources, receive appropriate training, and design forms and pamphlets to assist in the effort of providing victims and witnesses with necessary information. Consistent with available resources, I anticipate we will encourage the development of a victim/witness coordinator in the larger United States Attorneys

Offices to assist in the implementation of the guidelines and provide oversight on the treatment of victims and witnesses. In smaller offices, we expect it may be more appropriate to designate existing personnel who can be trained appropriately to deliver the victim/witness services contemplated by the Act and the guidelines.

In sum, the Department has pursued aggressively the implementation of this new legislation and is committed to continuing its efforts in an effective and expeditious manner. We believe that this Act is an important first step on the path to fair treatment of victims and witnesses who have for too long been neglected by our criminal justice system. While the Act imposes significant additional obligations and responsibilities upon Department personnel, we believe that the fulfillment of those obligations will result not only in substantial benefits to victims and witnesses of crime, but ultimately will redound to the benefit of the entire criminal justice system.

That completes my statement, Mr. Chairman. If there are any questions, I will be happy to answer them.

Senator GRASSLEY. Please stay for questions.

Mrs. Herrington, first of all I would like to congratulate you on your new position as Assistant Attorney General. Has there been any date set for your swearing in?

Mrs. HERRINGTON. July 13 at 11 o'clock in the great hall. And you are certainly invited.

Senator GRASSLEY. Congratulations.

Mrs. HERRINGTON. Thank you very much.

Senator GRASSLEY. Would you proceed.

Mrs. HERRINGTON. Thank you.

Mr. Chairman, I sincerely appreciate your invitation to appear before the subcommittee to discuss the issues of interest to you from the perspective of my previous role as chairman of the President's Task Force on Victims of Crime. At the outset, I want to commend you and the subcommittee for the level of personal interest you have demonstrated in the problems of the elderly as victims of crime. I have been extremely gratified by the level of concern expressed over the past several weeks by committees and individual Members of the Senate and House and the commitment to address the complex issues associated with criminal victimization.

I would also just like to take a moment to acknowledge and thank Senator Heinz, who I know who will be speaking after me, or perhaps in the middle, for his deep personal commitment and sincere interest in these victims and also to compliment you on the witnesses that I see outside, Mr. McGillis, Susan Hillenbrand, Mr. Sunderland. You have chosen some very outstanding and knowledgeable people to testify before your subcommittee.

Senator GRASSLEY. Thank you.

Mrs. HERRINGTON. I know that many of the members of the subcommittee are familiar with the report of the President's Task Force on Victims of Crime, but I have brought with me several additional copies for your use.

The task force was established by Presidential Executive order in April of last year. For the next several months, we interviewed professionals, both in and out of the criminal justice systems, who are responsible for serving victims. We reviewed the available literature and research on the subject of criminal victimization. And, most importantly, we spoke with citizens from around the country whose lives have been altered by crime.

What we found was deeply disturbing. What we found, essentially, is that crime has made victims of us all. It affects the way we think, where we live, where we go, what we buy, how we raise our children, and, of particular interest to this subcommittee, we found that crime deeply affects the quality of our lives as we age. Every citizen of this country is more impoverished, less safe, because of the fear of crime. And, rather than alter a system that has proved itself incapable of dealing with crime, society has altered itself.

Nowhere is our society's reaction to the fear of crime more apparent than among the aging. This is true, in part, because the elderly are acutely aware both of their vulnerability and of the devastating impact even a so-called minor crime may have on their lives. Because of the physical effects of aging, elderly victims are more likely to suffer disabling injuries such as fractured hips or broken bones in an incident that, to a younger victim might produce no serious injury at all. Similarly, a high proportion of the elderly live on very limited or fixed incomes that cover no more than their basic necessities. When crime strikes—the theft of a social security check or a purse snatching—these elderly victims are seldom able to absorb the economic loss without tremendous hardship. To an elderly crime victim, this can mean that he or she is unable, at least temporarily, to buy food or pay the rent. And when you are old and alone, where do you turn for help? All too often, they become even more fearful, and isolated, and alone—helpless to undo the damage inflicted by the crime and traumatized by the frightening awareness that it can happen again.

Essential trips outside the home are reduced—no visits to the doctor, fewer trips to the grocery, and the usual short walks through the neighborhood to visit friends for the companionship, so deeply treasured by the elderly, can seem too dangerous and frightening to contemplate.

One of the terrible ironies is that on top of the cruel burden inflicted by the criminal act itself, the elderly victim is often the most poorly treated client of the criminal justice system.

Time and again, the task force was presented with evidence showing that victims of crime are victimized twice—first by the criminal, and then by the criminal justice system. After a crime is committed, the victim may be interviewed, photographed, physically examined, the home dusted for fingerprints. Police officers come to the victim at work, call at odd hours to ask that he attend a line up; the victim's name and address show up in the newspapers and on television. When the case moves to court, the victim may have to take time off from work or, in the case of the elderly, find affordable transportation to the courthouse, only to discover that the trial has been rescheduled for the convenience of the judge or one of the attorneys. And, of course, this frequently happens more than once. The case may have arisen because someone was robbed, or raped, or maimed; but now the case belongs to lawyers and judges while the victim is the forgotten element in the equation that is expected to equal justice.

If the victim happens to be an elderly citizen afflicted with any of the infirmities typical of the aging process—slow of speech, hard of hearing, impaired vision—they are all too commonly treated within the criminal justice system with the same insensitivity that abounds elsewhere in our society. Police, judges, and lawyers may discount them as witnesses; failing to distinguish between mental capacity and physical infirmity, and coldly oblivious to the steps that might be taken to ease the hardship imposed on the elderly victim by physical impairment.

And what are the results of the system's treatment of the the elderly and other crime victims? Alienation—to the extent that more than half of the crimes are never reported to the police. Frustration—because of the insensitive and thoughtless treatment when they try to do their duty as citizens, victims frequently become reluctant and ineffective witnesses thereby, unintentionally, encouraging plea bargaining by the prosecutor or outright dismissal of the case.

As a former prosecutor myself, I can assure you, Mr. Chairman, that I have been profoundly affected by my experience with the

President's Task Force on Victims of Crime. It is the sincerest hope of my colleagues on the task force and I that our report and its recommendations will lead to effective action at every level of government and by policymakers in every segment of society which bears on the treatment of victims of crime. You may be assured that, in my new role as Assistant Attorney General, and, hopefully, as we implement the State and local assistance program proposed by the President and currently pending in the Senate, I will do everything in my power to represent the interests of elderly victims of crime and to encourage the implementation of the kinds of measures that will provide for victims of crime that we seek for all—justice.

I look forward to working with the subcommittee in the months ahead, and I will be pleased to respond now to any questions you may have.

Senator **Grassley**. First of all, let me thank each of you for your outstanding testimony and also your presentation of where we are today, because it outlines the environment from which we must move forward to give even further consideration to the status of victims of crime.

My first question is to you, Mrs. Herrington. What is your opinion of provision in the new law concerning victim impact statements? Does this need to be strengthened any more than what is presently in section 3?

Mrs. **Herrington**. Well, as you may be aware, Senator Grassley, the recommendations of our task force were quite explicit in what we felt in this area. We felt of course it is important for there to be an impact statement from the victim but if the victim chooses, we feel that it is equally important that the victim have a right to speak at the sentencing. This was for several reasons.

First of all, of course I think it is very important that when the judge is doing justice, when he is balancing the competing interests as judges do, that he be able to see and evaluate firsthand exactly the ramifications and the actions of the defendant and that before he can pass a sentence he must know clearly, exactly what his sentence is going to include and he must know the punishment that is expected by the actions that the criminal did. We feel that this most sincerely can be done most effectively by the victims themselves if they wish to be present. So many arguments against this have been that it would be too time consuming. But we had victims and witnesses from all over the country come to us and say you; know when the criminal is apprehended, and when he is brought for sentencing, the probation officer goes through a probation report, they talk to the ministers, they talk to the employers, they go through the military history, the psychiatric history, the employment history, the education history, they bring all this up and they write a report and then the judge may also send out for a complete new psychological workup. This takes months, perhaps. And what we are asking for is a very short period of time that the victim may address the court.

We did find in some instances that when there was simply a victim impact statement written, that the judge did not read it. Nobody can force any judge to read it and, unfortunately, I think we are dealing in an era—and I come from this era—so I do not feel as apologetic, that the victims were not mentioned in law school. They were not an issue that we considered and I think it is just as new to many of the judges and if they are going to use the discretion that they may use, they may not read this impact statement. Even if they choose to read it, times change and conditions change and sometimes the impact statement is written months before the final sentencing actually comes about because of the many continuances that happen and sometimes conditions of victims change and the court must be able to be aware of that also.

We do think it is very important that the victim have both the right to write it and if they choose, the right to speak to it at the sentencing.

Senator **Grassley**. I am not a lawyer but the independence of the judiciary makes it difficult for us to get fair consideration of the victim's economic impact statement by the judge. Is there anything that we can do to mandate that proper consideration?

Mrs. **Herrington**. Well, we are going to be addressing the Judicial College this fall and hopefully this will be an issue that we will raise there and talk with them about it.

Senator **Grassley**. And in similar landmark pieces of legislation, using that route of dialog with the judiciary, has it been fairly successful in getting consideration of things like this, as an example?

Mrs. **Herrington**. Well, I am not sure about that, Senator Grassley. I do not know. But I do know that as people become aware of the problem they do change and we have had more than one judge say, "I could weep for what I have done for victims, I did not know. I was not aware."

So we think as it is brought to their attention that perhaps they are not getting the full picture they should have at sentencing that they will become aware and want to change their behavior.

Senator **Grassley**. You gave an example of what you can do to get consideration of the judiciary of this weighty evidence. But is there anything that we need to do here as Congress beyond the legislation that was passed?

Mrs. **Herrington**. I would like to think about that answer and perhaps get together with my colleagues in the Justice Department and respond in writing to you, if that would be permissible.

But we certainly appreciate your interest.

[The following was received for the record:]

U.S. Department of Justice

Office of the Assistant Attorney General

Washington, D.C. 20531

JAN - 4 1984

The Honorable Charles E. Grassley
Chairman
Subcommittee on Aging
Senate Committee on Labor
& Human Resources
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your question posed during the hearing before the Subcommittee on Aging relative to the desirability of a legislative proposal to correct the inequities of the sentencing process as they affect victims of crime.

As I had indicated earlier in my testimony, I feel very strongly that the victim of crime should be allowed to speak and otherwise provide information both during the preparation of the presentence report and before the judge at the time of sentencing. The Administration is currently examining issues attendant to such victim presentations and I look forward to being able to share the results of our study with you in the near future.

The National Judicial College at Reno, with funding by the National Institute of Justice, recently held the first national conference on victims for state court judges. More than 100 judges representing the state and municipal judges of every state attended. The conference focused on the treatment of victims by the criminal justice system and the ways the courts could better respond to the victim's needs. Several victims of crime also testified regarding their personal experiences with the court system and how it impacted their lives.

Among the many issues the judges addressed at this conference were the use of victim impact statements in court proceedings; the victim's right to protection from intimidation and harassment by the defendants; and, the victim's role with respect to the processing of the case from the initial victimization to sentencing.

I am extremely gratified by the preliminary results of the conference. The trial judges concluded that a number of steps can and should be taken within the judicial system to help victims of crime and are recommending to their colleagues a series of steps toward improved consideration and treatment. Moreover, many of the judges indicated that they would return to their home communities and sensitize other judges and criminal justice officials to the plight of victims of crime.

I believe this type of effort by and with the judiciary may be the most effective means of pursuing our goal to put the victim in proper perspective throughout the judicial process. Additional federal legislation would appear to be unnecessary at this time.

Sincerely,

Lois Haight Herrington
Assistant Attorney General

Senator **Grassley**. Maybe I gave more weight or maybe I interpreted your point on this being more weighty than you intended.

Is it a major problem that judges are not looking at the victim impact statement?

Mrs. **Herrington**. Yes, it is a major—well, it is a major problem if the judges are not hearing from the victim one way or another.

Senator **Grassley**. I agree with that.

Now through this legislation where it has to be taken into consideration, is it a problem?

Mrs. **Herrington**. I think it is a problem.

Senator **Grassley**. Very well. We must look into this matter.

Jay, in your statement you mention that this law is just a first step on the path to fair treatment of victims. What I would like to have is your anticipation of what might be a good second step or third step.

Mr. **Stephens**. I suppose, Senator, that statement starts from the premise that the passage of a law all too frequently is viewed as an instant solution to a problem. It is the implementation of the law which frequently takes a long period of time, goes over a lot of difficult hurdles and runs into all the administrative difficulties that implementation of any significant piece of legislation encounters.

I think in the victim impact statement area, for example, a lot of that burden will fall in two places: one, in the probation office, and the committee may wish to exercise oversight of how that is being implemented, whether the probation offices throughout the country are indeed including victim impact statements.

Some courts, for example, do not permit the prosecutor to speak at sentencing. They may very well not permit the victim to speak at sentencing as Mrs. Herrington has pointed out. That is a problem over which you may want to exercise oversight.

Similarly, we are encouraging prosecutors and advising them to be a convincing advocate for the rights of the victim. I believe we can do that and move forward on that because it is a natural role for the prosecutor, to express to the court the damage that was done in a particular case.

In the area of restitution, there are some genuine difficulties as far as utilizing the criminal justice process for restitution, and this is an area on which I think the committee may wish to continue to focus.

As I pointed out, there are a number of shortfalls in using restitution, not the least of which is the process and the procedure. In the teleconferences that we had this spring which included members of the bench, defense counsel prosecutors, and probation officers. There was an entire range of opinion expressed as to the ramifications of that kind of hearing and what it would mean for the sentencing area: Whether it would mean an entire civil proceeding, or whether it would mean another jury trial. Some courts are looking at that as a possibility, which would mean that you have to have witnesses, and affidavits, and a broad range of proof in order to establish restitution.

We would prefer that the sentencing process not become unduly complicated—otherwise, you are imposing an additional burden upon the victim to go through another whole stage of a complicated process. So this is an area that I think would bear continued oversight and review by the subcommittee.

Senator GRASSLEY. Let us suppose that we have a convicted perpetrator who served his time in a Federal work program and he fails to make restitution and then consider that ordinarily Federal employee wages are not subject to garnishment and except in limited circumstances like child support. Will restitution be categorized as a limited exception to this overall practice?

Mr. STEPHENS. Whether restitution receives a priority, that is difficult for me to address. I would think that the act does entail a civil judgment provision whereby, for example, if a court has imposed restitution of $1,000 on the defendant and he also serves 5 years in jail, when he comes out, if the victim still has not been compensated; a civil action could be filed for that $1,000; the normal civil remedies, I believe, would apply, be garnishment, or attachment, or something of that nature to enforce the judgment.

So I believe those remedies would be available to a victim in a civil action to enforce the restitution which the court had opposed.

Senator GRASSLEY. Well, probably that is a point that we ought to pursue then.

Mr. STEPHENS. That is a point which in the implementation of the Act raises a number of concerns because the more restitution is viewed as part of a civil process, and less as part of the criminal process, the stronger the argument is to make the whole restitution proceeding another civil lawsuit.

Senator GRASSLEY. Then we would lose ground.

Mr. STEPHENS. And then we would lose ground.

Senator GRASSLEY. Yes.

Mr. STEPHENS. There is a very tenuous balance there. Our view is that we want to maintain the basic simplicity of the sentencing process and within that structure and perameters to have as much restitution as possible.

Senator GRASSLEY. Mrs. Herrington, going back now to the President's task force, as you were listening to all the witnesses and all the cases, did you hear of any cases where victims were unable to afford the cost of picking up their property from enforcement officials because of the cost of transportation?

Mrs. HERRINGTON. Not because of the cost of transportation but we did hear it because of the cost that, say their car has been towed or taken away, they could not afford to pay for the storage fees. We heard that and they had to wait a long time to get it and then, of course, the storage fees went up, so that they could not obtain the necessary funds.

Senator GRASSLEY. Well, I could ask both of you, who pays for the cost of transporting the property?

Mrs. HERRINGTON. The victim.

Senator GRASSLEY. Would that warrant legislative change? Is it a serious enough problem that we ought to be looking at it?

Mrs. HERRINGTON. I think it is a problem. I do not know whether I would categorize it as a serious problem. I think it is a problem for some people, very definitely. There are so many real serious problems, I hesitate to use the word "serious" in this context.

Mr. STEPHENS. Senator, I would add that the heart of this problem, I believe, is the failure to return property expeditiously. If someone is burglarized and they have their TV, stereo, car, or whatever else stolen and it remains in the criminal justice system for 2 years pending appeal, after awhile the victim decides, he might as well not have gone in the criminal justice system if he has to go out and buy a new car, stereo, or a new refrigerator, whatever may have been taken from the premises.

We are trying to encourage prosecutors to return that property as soon as possible. Perhaps use some alternative method, photographs, some other type of identification in the criminal trial process.

The actual cost of receiving that property or going to pick up that property while the victim may bear it, probably is not so substantial as to be one of the premier problems that the committee would want to address.

Senator GRASSLEY. I have one final question then. Both of you may respond, but I will direct it to Mrs. Herrington.

What other types of major problems do you foresee that this legislation, or the law does not address? Any other categories that you would want to mention for us?

Mrs. HERRINGTON. Well, there are many categories that I hope at some time will come to legislation, many.

Senator GRASSLEY. So you feel that what we have done so far is just really a basic start?

Mrs. HERRINGTON. I think it is a tremendous start. Just tremendous. It is a good basic start and I think it will do a great deal having this type of legislation in this area.

Senator GRASSLEY. I do not want to abuse the time of other witnesses so I will thank you for your excellent presentations.

And also let me announce, not only for myself but other committee members who cannot be here because of these other subcommittees that are meeting, as well as for succeeding witnesses, that we probably can anticipate getting questions in writing from—surely from me but also maybe from other people as well. So we would appreciate your responses, and also let me announce that for you or for anybody else on the witness list that there will be 15 days when the record is left open for additional testimony or corrections to be submitted and we will receive written testimony from anybody who would care to give it.

So thank you very much for your participation.

Mr. STEPHENS. Thank you very much, Senator.

Mrs. HERRINGTON. Thank you again for your interest in this area.

Senator GRASSLEY. Our next group is a panel, and I would invite them, Douglas Phillips and Daniel McGillis, to come to the table at this time. Douglas Phillips is an attorney with the Washington firm of Covington & Burling, and a member of the American Bar Association Committee on Victims. He is here to share with us the ABA's point of view on victims' compensation.

Also on the panel is Daniel McGillis, assistant director, Harvard Law School, Center for Criminal Justice, who will discuss his work on the major study of victim crime, victims' compensation programs.

Gentlemen, I know that you have come away from busy schedules. We appreciate it and we anticipate your helping us arrive at some resolution of the issues that are before us through your testimony. I would ask you to proceed in the way that I introduced you, please.

STATEMENTS OF DOUGLAS E. PHILLIPS, AMERICAN BAR ASSOCIATION, COMMITTEE ON VICTIMS SECTION OF CRIMINAL JUSTICE, AND DANIEL McGILLIS, ASSISTANT DIRECTOR, CENTER FOR CRIMINAL JUSTICE, HARVARD LAW SCHOOL, A PANEL

Mr. PHILLIPS. My name is Douglas Phillips, Mr. Chairman, and I appear before you today on behalf of the American Bar Association's criminal justice section Victims Committee, to express the support of the ABA for the principles embodied in S. 704. The title of this hearing is "Does victim compensation work?" Of course, not many victims of serious crimes are likely to believe that anything will truly compensate them, or make them whole, but the phrase "victim compensation," I think, makes the point that assistance to victims is not a matter of grace; it is a matter of justice. And while the criminal act cannot be erased, victim assistance can, at least to some extent, vindicate the victim's right to security, redress the imbalance of benefits and burdens, and honor the Government's obligation to prevent further victimization.

By way of background, I might just mention that the criminal justice section of the ABA represents the full range of participants in the criminal justice system, from prosecutors to defense attorneys to judges. And for a number of years the ABA, through its criminal justice section, has been on record in support of the kinds of programs addressed by the legislation you are considering. This goes back to 1967 and it includes support both for specialized efforts in areas such as rape and family violence, and for a more comprehensive approach. The ABA in particular testified before the President's Task Force on Victims in 1982 and we are pleased that the final report of the victims task force contains recommendations of Federal aid to compensation and service assistance programs.

We appear once again today to repeat our firm belief that victims whom the criminal justice system has not been able successfully to protect deserve the assistance of the Federal Government in dealing with financial and service needs occasioned by the crime against them. It has been pointed out more than once the victims of serious crime often report that they are victimized not once but several times by a single crime—first by the criminal act and then by the medical bills and the trauma and all the other consequences. Even after the criminal act occurs, this secondary victimization can, with considerable effort, to some extent be prevented or reduced. We believe that doing so should be viewed as an essential function of the criminal justice system and that the Federal Government should support this function.

Of course, there has been, during the past decade, considerable public interest in the crime victim, and we have seen a number of States finally beginning to express new concern for the rights and interests of victims with increased restitution, protection from intimidation and the use of victim impact statements. We have also seen new laws that require better information from victims on the processing of their cases.

And, of course, we have seen the adoption of the Victim and Witness Assistance Act in 1982 at the Federal level; we applaud the passage of that legislation. The fact that only minimal costs are necessary to implement that act does not detract from its validity or potential impact. But we do note that, while many States have been willing if not always able to support victim assistance, the Federal Government does not currently provide funds for victim compensation. We believe that Federal aid to State and local assistance programs is only fair. As the President's task force on victims pointed out in its final report, most of the State compensation programs include compensation for Federal crime victims, and local service programs assist victims and witnesses of Federal crimes. So State and local funds do encourage cooperation in Federal prosecution, and as the task force noted, the Federal Government has made considerable sums of money available for the education and rehabilitation of State prisoners. We agree with the task force that Federal funds should also assist the innocent taxpayer victimized by these prisoners.

Now, it would be possible to set up separate Federal programs for victims of Federal crimes or to limit Federal reimbursement to a part of a State program that assists a Federal victim, but even if the administrative problems with such an approach could be overcome, we believe that either approach would be confusing to the average citizen and certainly to the average victim who would be unconcerned with the Federal-State distinction and hard pressed to understand why some victims are compensated or assisted by their Federal Government while others are not.

Finally, the Federal Government, both through Congress and the Federal courts, has quite properly recognized and protected the rights of those accused and even convicted of crimes. The challenge is to match at the Federal level, as well as the State level, respect for the rights of criminal defendants with due regard for the rights and interests of victims. We believe S. 704 is an opportunity for Congress to meet this challenge.

We do have a few specific comments on particular aspects of the legislation. We believe that the principle of Federal assistance to crime victims is of sufficient import to warrant expenditure of general revenue funds. So, while we are delighted that the authors of the bill have identified it as an alternative source of funding, we would have supported use of other sources of funding as well. At the same time, we do believe that it is necessary and appropriate for the court to consider the ability of the defendant to pay.

Section 3802 refers to the distribution of Federal funds to qualifying State crime victims' compensation funds. This is an important and central aspect of the bill. It specifies the requirements for eligibility of State funds. The first is that the State fund compensate all the victims of crime, and the second is that it provide psychological counseling to any victim who needs such counseling.

We believe that the first of these requirements is too broad and that the second incorrectly singles out psychological injury for mandatory coverage, while—taken alone—it would leave other sorts of injury or coverage for other sorts of injury optional. So we would suggest focusing on a range of injurious crimes by, first, requiring that eligible State programs compensate all victims or their surviving dependents who have incurred actual expenses directly or indirectly related to physical or psychological injury or death caused by the crime and, second, limiting Federal reimbursement to a portion of the compensation paid by the State to victims or their surviving dependents for actual expenses relating directly or indirectly to physical and/or psychological injuries or death caused by the crime.

The first suggestion is designed to insure that the State programs reimburse victims of injurious crimes. It would insure that nonresident victims or victims of Federal crimes are covered, but it would not require as a condition of eligibility compensation for all crimes.

The second suggestion would limit the Federal contribution to areas recommended for coverage under the Uniform Crime Victims Reparation Act, which would be medical care, rehabilitation, rehabilitative occupational training, funeral expenses, loss of wages and replacement services, and certain other losses. Reimbursement would not be provided for property loss or pain for suffering, and that I think is the key difference.

Most States—in fact, virtually all States now—follow the Uniform Act model and they do not compensate victims for property loss or noneconomic pain and suffering. There is no question that property loss, especially in the case of the elderly, can be devastating, but we believe that first priority should be directed to victims who have been psychologically or physically injured. States that are willing and able to cover additional expenses would not be precluded from doing so. But we do not think that they should be required to do so as a condition of receiving funds.

Generally we believe that Federal funds should reimburse States' compensation programs without a lot of strings attached and we approve leaving to the discretion of the States the minimum and maximum amount of award, but we would support a requirement that the victims report to law enforcement officials within 72 hours of the crime unless there was good cause for failing to do so. We would also recommend a good samaritan provision to require coverage of those injured trying to prevent a crime or acting to apprehend a perpetrator. People in that position are certainly also victims of crime and, like the reporting requirement, such a provision would encourage increased citizen involvement in crime control.

The maximum State reimbursement under the proposed legislation is 10 percent of a State's previous year's compensation awards. We question whether a 10 percent maximum reimbursement is sufficient. Senator Heinz pointed out in introducing the legislation that virtually all the State victim compensation programs are experiencing financial problems. Many are forced to limit the amount of their awards; some are afraid to advertise their benefits for fear that people will take advantage of the program and deplete available resources. There are often long waiting periods before compensation claims are processed. This can severely disadvantage especially the most needy victims.

Senator Heinz has estimated that this legislation would generate a minimum of $45 million and a maximum of $125 million in fines, penalties and forfeitures. This would mean that the compensation portion would be somewhere between $22.5 and $62.5 million. States in 1981 paid a total of $49 million in compensation awards; 10 percent of that, of course, would be $4.9 million. This means that, even with some additional costs under the new legislation, the amount collected for compensation purposes would be considerably more than 10 percent of that awarded by the States and a fair amount would necessarily under the terms of the act be returned to the U.S. Treasury.

So we would suggest that the maximum percentage of reimbursable payments to the States be raised to at least 25 percent. There would still be economic incentives for States to be responsible and this higher maximum would not commit the Government beyond funds at its disposal since 50 percent of the amount collected would be an absolute ceiling.

On section 3802, we would also point out that the language concerning psychological counseling may be ambiguous. It seems to require the State fund is to provide the counseling and, of course, we believe that victims should have the opportunity to choose their own counselor.

Section 3803 provides that 50 percent of the funds collected by the crime victims assistance fund are to support victim and witness assistance projects. Half of this amount is to be distributed at the discretion of the Attorney General for Federal activities. The bill does not specify how the other half will be distributed. We presume this would be available for State and local programs but we think this point should be clarified. We also strongly recommend that the legislation specifically state that specialized assistance programs, like rape crisis centers and domestic violence shelters, as well as general witness assistance programs, are eligible for funds under this section.

Section 3804 calls for the return of unexpended funds to the General Fund of the U.S. Treasury. Although we would like to see the maximum percentage eligibility for State participation raised, we agree with the provisions of this section.

Thank you.

[The prepared statement of Mr. Phillips and responses to questions asked follow:]

AMERICAN BAR ASSOCIATION

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STATEMENT

OF

DOUGLAS E. PHILLIPS

MEMBER, COMMITTEE ON VICTIMS
SECTION OF CRIMINAL JUSTICE

ON BEHALF OF THE

AMERICAN BAR ASSOCIATION

Before The

SUBCOMMITTEE ON AGING
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

Concerning

S. 704

A BILL TO ESTABLISH THE CRIME VICTIM'S ASSISTANCE FUND

June 28, 1983

Washington, D. C.

Mr. Chairman and Members of the Subcommittee:

My name is Douglas Phillips. I am an attorney with the Washington law firm of Covington & Burling. As a member of the Victims Committee of the American Bar Association's Section of Criminal Justice, I appear before you today to express the ABA's support for the principles embodied in S. 704 — federal aid for direct financial compensation to crime victims and support of victim assistance treatment programs.

Of course, few victims of serious crime are likely to believe that any amount of money can truly "compensate" them for the losses they have suffered. The phrase "victim compensation" reflects the point that assistance to victims is not a matter of charity or grace. It is a matter of justice. Recognizing that the criminal act cannot be erased, victim (and witness) assistance aims as far as possible to vindicate the victim's right to personal security, to redress the imbalance of benefits and burdens resulting from crime, and to honor the government's continuing obligation to prevent further victimization.

As you may know, the American Bar Association is a voluntary organization of 300,000 attorneys from every state in the nation. Nearly 10,000 of these lawyers also belong to the Association's Criminal Justice Section. Constituted of prosecutors, defense attorneys, judges, law professors, general practitioners and others interested in the criminal law, the Section represents the full range of interests and perspectives in the criminal justice system.

For a number of years, the ABA has been on record in support of the kinds of programs addressed by the legislation before you. In 1967, the Association adopted a Criminal Justice Section recommendation approving of federal compensation for crime victims. In 1974, it endorsed the Uniform Crime Victims Reparation Act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

To date, ABA policies addressing victim and witness service programs have related to specialized efforts. A 1975 policy, for example, called for the establishment of treatment and study centers to aid the victims of rape. In 1978 the ABA went on record supporting federal, state and local programs to combat the incidence, causes and effects of violence in the family. The specialized focus of these policies underlines the special treatment needs of certain kinds of victim. It is, however, in no way meant to preclude the sort of comprehensive approach to victim services advocated in S. 704. In fact, this more general approach is recommended in the proposed "Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice System" that the Criminal Justice Section will take to the ABA's policymaking House of Delegates in August. The comprehensive approach is also manifested in an active Section effort over the past several years to involve state and local bar associations in victim and witness assistance.

Three times previously—in 1975, 1977 and 1979—representatives of our Association have testified at congressional hearings on federal crime victim compensation. In 1979 and 1980, we urged congressional action approving federal funds for assistance programs working with domestic violence victims. We testified before the Attorney General's Task Force on Violent Crime in 1981 and before the President's Task Force on Victims in 1982, urging both groups to consider recommendations of federal aid to compensation and service assistance programs. We are pleased that the final report of the Victims Task Force contains recommendations in both of these areas.

Today we appear once again to repeat our strong belief that victims whom the criminal justice system has been unable successfully to protect deserve the assistance of the federal government in dealing with the financial and service needs occasioned by the crime against them. Victims of serious crime often report that they are victimized not once but several times by a single crime—first by the criminal act, then by the medical bills, psychological injuries, and other secondary consequences of the crime. Even after the criminal act occurs, this secondary victimization can to some extent be prevented or reduced. Doing so ought to be viewed as an essential function of the criminal justice system, which after all exists in large part for the purpose of protecting individuals against victimization. The federal government ought to support this essential function.

As you know, the past decade has evidenced considerable public concern for the crime victim. Originally a grassroots effort, states have finally begun to express due concern for the rights and interests of victims. During the past several years, increased restitution, protection from intimidation and use of victim impact statements have been the subject of recently-enacted statutes. New laws also require improved notification and information to victims regarding the processing of "their" cases.

Last year the federal government addressed these same issues in the Victim and Witness Assistance Act of 1982, signed by President Reagan in October. The ABA lobbied hard for that legislation and applauds its passage. The fact that only minimal costs are necessary to implement its various provisions certainly does not detract from its validity or potential impact. We do note, however, that unlike the federal government, many of the states have become increasingly willing to expend state funds for more expensive, complementary legislation. For example, thirty-seven states and the District of Columbia now have state-funded victim compensation programs. At least fifteen states have institutionalized and provided some degree of funding for local victim assistance projects. To date, the federal government has provided no funds for compensation. The limited Law Enforcement Assistance Administration funds previously awarded to selected victim and witness assistance projects are no longer available.

Federal aid to state compensation and local service assistance programs for victims is necessary, fair and appropriate. The final report of the President's Task Force on Victims points out that most state compensation programs currently include compensation for federal crime victims and that local service programs assist victims and witnesses of federal crimes. To the extent that victims and witnesses who receive assistance are more cooperative with law enforcement agencies, state and local funds encourage cooperation in federal prosecution. In addition, the Task Force notes that the federal government has made substantial sums of money available for the education and rehabilitation of state prisoners and suggests that it is only just that federal funds also assist the innocent taxpayer victimized by these prisoners. We agree.

It would of course be possible to set up separate federal programs for victims of federal crimes, though the administrative costs of such an approach would be significant. It would also be possible (if administratively quite difficult) to limit federal reimbursement to that portion of the state program compensating or assisting federal victims. Either of these approaches, however, would be confusing to the average citizen--and certainly to the average victim--who will be unconcerned with the federal/state distinction and hard pressed to understand why some victims are compensated or assisted by their federal government, while others not.

Some of the basic values of this country constrain efforts to control crime, and properly so. The Founding Fathers, Congress, and the federal courts have recognized and protected individual and collective rights that extend to those accused and even convicted of crimes. To defend such rights in no way lessens our responsibility to alleviate the suffering that crime causes to individual members of our society. The challenge is to match our respect for the rights of criminal defendants with due regard for the rights and interests of crime victims. This bill to assist victims is an opportunity to meet this challenge.

I would like briefly to review the several sections of the proposed legislation.

Section 3801 establishes the Crime Victims Assistance Fund. The ABA believes that the principle of federal assistance to crime victims is of sufficient import to warrant expenditure of general revenue funds. Of course, the fact that the authors of this bill have identified an alternative source of funding is certainly applauded. We agree that whenever possible offenders should be held responsible for funding programs to ameliorate the effects of victimization. At the same time, we are pleased that the legislation requires the court to consider the ability of the defendant to pay. This is in accordance with ABA Sentencing Alternatives and Procedures Standard 18-2.7(c)(i) and is a practical necessity.

Section 2802 refers to distribution of federal funds to qualifying state crime victims' compensation funds. Two requirements are specified: (1) that the state fund compensate all victims of crime and (2) that it provide psychological counselling to any crime victim who needs such counselling.

We believe that the first of these requirements is too broad and that the second singles out one type of injury (psychological) for mandatory coverage while leaving another (physical) optional. In lieu of these, we respectfully suggest that the legislation:

(1) require that eligible state programs compensate all victims or their surviving dependents who have incurred actual expenses directly or indirectly related to physical and/or psychological injuries or death caused by the crime, and

(2) limit federal reimbursement to a portion of the compensation paid by the state to victims or their surviving dependents for actual expenses relating directly or indirectly to physical and/or psychological injuries or death caused by the crime.

The first suggestion would ensure that the eligible state programs reimburse victims of all types of injurious crimes. It would also ensure that non-resident victims or victims of federal crimes in a given state are covered by the state program.

The second suggestion would limit the federal contribution to areas recommended for coverage under the NCCUSL Uniform Act—medical care, rehabilitation, rehabilitative occupational training, funeral expenses, loss of wages and replacement services. If the injury causes death, the NCCUSL Act would compensate for dependents' economic loss and dependents' replacement losses. Reasonable attorneys fees are also to be compensated. However, reimbursement is not provided for property loss or for pain and suffering.

At present, most states follow the NCCUSL model and do not compensate victims for property loss or non-economic pain and suffering. The implicit requirement of S. 704 that they do so to participate in the federal program is, we feel, an unwarranted burden. Additional costs associated with this requirement would likely more than offset any financial benefits of the proposed legislation. While property loss and certain other non-economic losses can certainly be devastating, first priority must be directed to "making whole" those victims who have been physically and psychologically injured. States willing and able to cover additional expenses and non-economic costs of crime would in no way be precluded from doing so by excluding reimbursement for such purposes from this legislation. They would continue to qualify on an equal basis with the other states for reimbursement of injury-related expenses.

Generally, we believe that federal funds should reimburse state compensation programs without a lot of strings attached. Thus we note with approval that the proposed legislation—as the NCCUSL Uniform Act—leaves to the discretion of the individual states the minimum and maximum amount of their awards.

An exception to our "no strings" policy concerns an ABA-approved NCCUSL recommendation that to qualify for compensation victims must report to law enforcement officials within 72 hours after the commission of the crime unless there was good cause for failing to do so. Admittedly there have been valid arguments on both sides of this issue. On balance, however, we feel that requiring cooperation with the criminal justice system as a price of compensation is reasonable and financially responsible.

A second string which we would recommend would be a "Good Samaritan" provision, requiring coverage of those who are injured trying to prevent a crime or apprehend a perpetrator. Such individuals are certainly victims of crime. Moreover, as the reporting requirement mentioned above, such a provision would encourage increased citizen involvement in the state's overall crime prevention strategy.

The maximum state reimbursement under the proposed legislation is 10% of a state's previous year's compensation awards. If, as we have suggested, federal reimbursement is limited to a portion of actual costs associated with physical or psychological injuries, the legislation should specify whether or not state compensation program payments for other purposes are included or excluded from calculation of the state's share for any given year.

A more fundamental consideration, however, is whether a 10% maximum reimbursement is sufficient to provide meaningful assistance to state crime victim compensation programs. While we are somewhat disappointed that the legislation does not provide "seed" moneys for new programs, maintaining and expanding existing ones is certainly a worthy goal. As Sen. Heinz pointed out in introducing the legislation, virtually all of the state victim compensation programs are experiencing financial problems. Many are being forced to limit the amount of their awards. Others are afraid to advertise their benefits for fear that resulting claims will deplete available resources. There are often long waiting periods before compensation claims are processed or sufficient revenues generated to pay them. Lack of funds also discourages programs from raising or eliminating the maximum allowable award. This can severely disadvantage those most needy victims.

Sen. Heinz has estimated that the funding sources advocated by this legislation—fines, penalties and forfeitures—will generate a minimum of $45 million and a maximum of $125 million. Thus the compensation portion would be somewhere between $22.5 and $75 million. Even conservative estimates based on these figures would accommodate a greater than 10% reimbursement to the states which in 1981 paid out a total of $49 million in compensation awards. The base for reimburseable compensation under the proposed legislation would of course be higher than this figure. In the past several years, several new programs have been established. Some programs have expanded their coverage or increased the amount of of their payments. In addition, new payments for federal victims not currently covered and the administrative costs associated with processing their claims would apply under the legislation. Nonetheless, it appears that the amount collected is likely to be considerably more than 10% of that awarded by the states. Rather than return all of this "excess" over to the U.S. Treasury, we would suggest that the maximum percentage of reimburseable payments to the states be raised to at least 25%. Considerable economic incentives would remain for the states to be responsible. Moreover, this higher maximum would not commit the government beyond funds at its disposal since fifty percent of the amount collected for victim assistance purposes would be an absolute ceiling on the amount distributed to the states for victim compensation reimbursement purposes.

One final comment on §3802 of the legislation as it is currently drafted—the wording of the requirement regarding psychological counselling [(b)(1)(B)] is confusing. It would appear to require that the state fund itself is to provide counselling—or at least arrange for such counselling—rather than merely to compensate victims who receive counselling from counsellors of their own choice.

Section 3803 provides that 50% of the funds collected by the Crime Victims Assistance Fund are to support victim and witness assistance projects. Half of this amount is to be distributed at the discretion of the Attorney General for federal activities. It would appear that at least part of the other half would be available for state and local programs; however, as this is not specified in the bill, we suggest this point be clarified. We also strongly recommend that the legislation specifically state that specialized assistance programs—such as rape crisis centers and domestic violence shelters—as well as prosecutor, court, police and other general victim and witness assistance programs—are eligible for funds under this section.

Section 3804 calls for the return of unexpended funds to the general fund of the U.S. Treasury. With the exception noted above—namely, that we would like to see the maximum percentage eligibility for state participation in the victim compensation portion of this legislation raised—we agree with the provisions of this section.

Thank you for your time and attention. I will be glad to answer any questions you may have.

American Bar Association

July 8, 1983

Dear Mr. Chairman:

I very much appreciated having the opportunity to appear before your Subcommittee on Aging last week to present the American Bar Association's views on S.704, which would establish a crime victim assistance fund.

At the hearing, you asked me to send you in writing additional comments on the ABA position with respect to two specific issues, namely, the so-called "means" test and minimum loss requirements for victim compensation programs.

In accordance with the National Conference of Commissioners on Uniform State Laws' Uniform Crime Victims' Reparations Act on which it is based, ABA policy would leave the inclusion or deletion of such provisions up to the discretion of the individual states. If, for either financial or philosophical reasons, states wish to include these requirements, the Uniform Act provides appropriate language (see Section 5(g) and 5(h) of the enclosed Act). If not, as indicated by the extra set of parentheses, the sections are optional and may be deleted.

We would suggest that a federal compensation statute also recognize legitimate state differences in these areas and base the amount of its reimbursement to each state on that state's payments to victims, without regard to provisions requiring a means test or minimum loss.

Please let us know if we might be of further assistance.

Sincerely,

Douglas E. Phillips

Douglas E. Phillips
Member, Victims Committee

Honorable Charles E. Grassley
Chairman, Subcommittee on Aging
Committee on Labor and Human Resources
U.S. Senate
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SECTION OF CRIMINAL JUSTICE

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NATIONAL CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS

UNIFORM CRIME VICTIMS REPARATIONS ACT

SECTION 1. (Definitions.)

(a) As used in this Act, the words and phrases in this Section have the meanings indicated.

(b) "Board" means the Crime Victims Reparations Board created under Section 3.

(c) "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.

(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:

(1) the offender;

(2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this Act;

(3) Social Security, Medicare, and Medicaid;

(4) state required temporary non-occupational disability insurance;

(5) workmen's compensation;

(6) wage continuation programs of any employer;

(7) proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or

(8) a contract providing prepaid hospital and other health care services, or benefits for disability.

(e) "Criminally injurious conduct" means conduct that (1) occurs or is attempted in this State, (2) poses a substantial threat of personal injury or death, and (3) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this State. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death.

(f) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.

(g) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of $500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary

charge for semi-private accommodations, unless other accommodations are medically required.

(2) "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

(3) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(4) "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

(5) "Dependents's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

(h) "Non-economic detriment" means pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage.

(i) "Victim" means a person who suffers personal injury or death as result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

SECTION 2. (Award of Reparations.) The Board shall award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

SECTION 3. (Crime Victims Reparations Board.)

(a) A Crime Victims Reparations Board is created (in the executive branch), consisting of three members appointed by the Governor (with the advice and consent of the Senate). At least one member shall be a person admitted to the bar of this State.

(b) The term of office of each member shall be (6) years and until his successor is appointed and qualified, except that of the members first appointed one each shall be appointed to serve for terms of (2), (4), and (6) years. A person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

(c) The Governor shall designate a member who is admitted to the bar of this State to serve as chairman at the pleasure of the Governor.

(d) Members shall (serve full time, receive an annual salary prescribed by the governor within the available appropriation not exceeding (   ) dollars,) (serve part time, and receive (   ) dollars per diem,) and be reimbursed for actual expenditures incurred in performance of their duties in the same manner as State officials generally.

SECTION 4. (Powers and Duties of the Board.)

(a) In addition to the powers and duties specified elsewhere in this Act, the Board has the powers and duties specified in this section.

(b) The duty to establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation.

(c) The duty to adopt by rule a description of the organization of the board stating the general method and course of operation of the Board.

(d) The duty to adopt rules to implement this Act, including rules for the allowance of attorney's fees for representation of claimants; and to adopt rules providing for discovery proceedings, including medical examination consistent with Section 9 and 10. Rules shall be statements of general applicability which implement, interpret, or prescribe policy, or describe the procedure or practice requirements of the Board.

(e) The duty to prescribe forms for applications for reparations.

(f) The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.

(g) The power to request from prosecuting attorneys and law enforcement officers investigations and data to enable the Board to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this Act.

(h) The duty, if it would contribute to the function of the Board, to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence.

(i) The power to take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.

(j) The duty to make available for public inspection all Board decisions and opinions, rules, written statements of policy, and interpretations formulated, adopted, or used by the Board in discharging its functions.

(k) The duty to publicize widely the availability of reparations and information regarding the filing of claims therefor.

SECTION 5. (Application for Reparations; Awards; Limitations on Awards.)

(a) An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the Board.

(b) Reparations may not be awarded unless the claim is filed with the Board within one year after the injury or death upon which the claim is based.

(c) Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice. (Unless the Board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.)

(d) Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the Board finds there was good cause for the failure to report within that time.

(e) The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.

(f) Reparations otherwise payable to a claimant shall be reduced or denied

(1) to the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources, and

(2) to the extent the Board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims.

((g) (1) Reparations may be awarded only if the Board finds that unless the claimant is awarded reparations he will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if he cannot maintain his customary level of health, safety, and education for himself and his dependents without undue financial hardship. In making its finding the Board shall consider all relevant factors, including:

(i) the number of claimant's dependents;
(ii) the usual living expenses of the claimant and his family;
(iii) the special needs of the claimant and his dependents;
(iv) the claimant's income and potential earning capacity; and
(v) the claimant's resources.

(2) Reparations may not be awarded if the claimant's economic loss does not exceed ten per cent of his net financial resources. A claimant's net financial resources do not include the present value of future earnings and shall be determined by the Board by deducting from his total financial resources:

(i) one year's earnings;
(ii) the claimant's equity, up to $30,000, in his home;
(iii) one motor vehicle; and
(iv) any other property exempt from execution under (the general personal property exemptions statute of this State).

(3) Notwithstanding paragraph (2):

(i) the board may award reparations to a claimant who possesses net financial resources in excess of those allowable under paragraph (2) if, considering the claimant's age, life expectancy, physical or mental condition, and expectancy of income including future earning power, it finds that the claimant's financial resources will become exhausted during his lifetime; or

(ii) the Board may (A) reject the claim finally, or (B) reject the claim and reserve to the claimant the right to reopen his claim, if it appears that the exhaustion of claimant's financial resources is probable, in which event the Board may reopen pursuant to an application to reopen if it finds that the resources available to the claimant from the time of denial of an award were prudently expended for personal or family needs.)

((h) Reparations may not be awarded if the economic loss is less than ($100).) ALTERNATIVE A

((i) Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed $200 per week.) ALTERNATIVE B

((i) Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed the amount by which the victim's income is reduced below $200 per week.)

((j)Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed ($50,000) in the aggregate.)

SECTION 6. (Notice to Attorney General; Function of Attorney General.)

Promptly upon receipt of an application for reparations, the board shall forward a copy of the application and all supporting papers to the (Attorney General), who in appropriate cases may investigate the claim, appear in hearings on the claim, and present evidence in opposition to or support of an award.

SECTION 7. (Informal Disposition; Contested Case.)

Unless precluded by law, informal disposition may be made of a claim by stipulation, agreed settlement, consent order, or default. A claim not so disposed of is a contested case.

SECTION 8. (Contested Cases; Notice; Hearing; Records.)

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice of hearing shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted. To the extent that the board is unable to state the matters at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite statement shall be furnished.

(c) Every interested person shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to his interest, and examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to his interest.

(d) A record of the proceedings shall be made and shall include:

(1) the application and supporting documents;

(2) all pleadings, motions, and intermediate rulings;

(3) evidence offered, received, or considered;

(4) a statement of matters officially noticed;

(5) all staff memoranda or data submitted to the Board in connection with its consideration of the case; and

(6) offers of proof, objections, and rulings.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party, who shall pay transcription costs unless otherwise ordered by the Board.

(f) Determinations of the Board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record, and mailed promptly to all parties.

SECTION 9. (Evidence of Physical Condition.)

(a) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Act in which that condition is an element.

(b) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the Board may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(c) On request of the person examined, the Board shall furnish him a copy of the report. If the victim is deceased, the Board, on request, shall furnish the claimant a copy of the report.

(d) The Board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

SECTION 10. (Enforcement of Board's Orders.) If a person refuses to comply with an order under this Act or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the Board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the Board may petition the (   ) Court for an appropriate order, but the Court may not find a person in contempt for refusal to submit to a medical or physical examination.

SECTION 11. (Award and Payment of Reparations.)

(a) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

(b) The Board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under Section 15.

SECTION 12. (Attorney's Fees.) As part of an order, the Board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the State to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

SECTION 13. (Subrogation; Actions; Allocation of Expenses.)

(a) If reparations are awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source.

(b) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the Board prior written notice of the proposed action. After receiving the notice, the Board shall promptly (1) join in the action as a party plaintiff to recover reparations awarded, (2) require the claimant to bring the action in his individual name, as a trustee in behalf of the State, to recover reparations awarded, or (3) reserve its rights and do neither in the proposed action. If, as requested by the Board, the claimant brings the action as trustee and recovers reparations awarded by the Board, he may deduct from the reparations recovered in behalf of the State the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

(c) If a judgment or verdict indicates separately economic loss and non-economic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for non-economic detriment, punitive damages, and economic loss.

SECTION 14. (Manner of Payment; Non-assignability and Exemptions.)

(a) The Board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection (b), the part of an award that may not be paid in a lump sum shall be paid in installments.

(b) At the instance of the claimant, the Board may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding by the Board that:

(1) the award in a lump sum will promote the interests of the claimant; or

(2) the present value of all future economic loss other than allowable expense, does not exceed ($1,000).

(c) An award for future economic loss payable in installments may be made only for a period as to which the Board can reasonably determine future economic loss. The Board may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.

(d) An award is not subject to execution, attachment, garnishment, or other process, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that he provided products, services, or accommodations the costs of which are included in the award.

(e) An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except (1) an assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or (2) an assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

SECTION 15. (Tentative Awards.) If the Board determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

SECTION 16. (Reconsideration and Review of Board Decisions.)

(a) The Board, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The Board shall reconsider at least annually every award being paid in installments.

An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

(b) The right of reconsideration does not affect the finality of a Board decision for the purpose of judicial review.

(c) A final decision of the Board is subject to judicial review on appeal by the claimant, the (Attorney General), or the offender (in the same manner and to the same extent as the decision of a state trial court of general jurisdiction).

SECTION 17. (Reports.) The Board shall prepare and transmit (annually) to the Governor and the Legislature a report of its activities, including the name of the claimant, a brief description of the facts, and the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

SECTION 18. (Uniformity of Application and Construction.) This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states enacting it.

SECTION 19. (Severability.) If any provision of this Act or the application thereof to any person is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 20. (Title.) This Act may be cited as the Uniform Crime Victims Reparations Act.

Senator GRASSLEY. Thank you. Please proceed Mr. McGillis, before I ask questions.

Mr. MCGILLIS. Thank you, Senator. I am very pleased to be here to testify on the topic of crime victim compensation; 6 months ago, my colleague, Patricia Smith, and I completed work on a national study on this topic. I will be very brief in describing some of the findings of that work.

Our study was funded by the National Institute of Justice, of the U.S. Department of Justice, and it was designed in response to a recommendation of the Attorney General's task force on Violent Crime. The President's task force on Victims of Crime began its work shortly after we started our study and we sought to respond to the information needs of the President's task force as well as the Attorney General's task force. I should note that we were very impressed with the final report of the President's task force, and I feel that its recommendations with regard to crime victim compensation are right on point, and I am also very delighted with your work and that of Senator Heinz in proposing Senate bill 704 which would, implement some of the core recommendation of the task force with regard to crime victim compensation.

In my testimony I will briefly describe how we conducted the study. I will talk about what we found regarding the extent of victim compensation program development around the United States, and I will review some of the major findings and conclusions of the study very briefly.

With regard to the methods used to conduct the study, five basic data collection efforts were carried out. First, we conducted a national telephone survey of program directors of all of the programs around the country that provide crime victim compensation. We obtained a great deal of information and much of that is presented in our final report.

We also conducted a telephone survey of policymakers in States not having these programs to determine relevant past initiatives in those States and any plans for future actions to develop this type of program. We reviewed available studies, as you might imagine, on legal, political, and economic issues related to this topic. We reviewed the legislative histories of the Federal bills that go back to 1965 and met with congressional staff who had worked on those bills over a period of time to try to find out what information they had and why these bills had been considered by the Congress repeatedly and yet no bill has ever passed.

Finally, we conducted site visits to six States that were representative of programs on a variety of dimensions. It is important to note that the Attorney General's task force recommended that a relatively inexpensive study be conducted. I should stress that our work is primarily descriptive. We did not collect data on programs' impacts upon victims, for example, doing surveys of how victims view these programs. We also did not collect data on how Justice system agencies view these programs. We instead looked at the programs themselves and their case processing. We also did not collect the data on case processing directly from files; the projects provided us the data. So those are two caveats on the study.

With regard to program development in the United States, the first U.S. victim compensation program was developed in California in 1965, and programs have spread rapidly over the years, as my written testimony indicates. I have some charts in the written testimony that show the rapid sweeping increase of program development. Especially in the late seventies, there was a great deal of new program development. We now have programs in 36 States and the District of Columbia, and there are just a few regions in the Nation that do not have very much victim compensation program development. Those are primarily northern New England, the Deep South, and the Mountain States, and if you look at these States and think about them, they do share a number of characteristics in common. Many of them tend to have relatively low populations, they tend to have relatively low crime rates, and many of them tend to have relatively low State per capita income taxes. And I think that perhaps Federal legislation might encourage the development of programs in these States, these regions that have been relatively resistant to program development over time.

Now, with regard to the findings and conclusions of the study, it is very important, I think, first to note that there is a lot of disagreement in the literature about how these programs are doing. There are some who say that they are doing extremely well and some that say they are doing extremely poorly, and that is simply caused by differences in notions regarding what the appropriate goals of these programs are.

There is one school of thought that says crime victim compensation programs should serve all innocent victims of crime, and people draw this notion from legislative testimony and floor debates, and so forth, where sometimes sweeping goals for these programs have been stated during their development. People who accept this as a goal feel that programs are doing badly because there are relatively low levels of public awareness of the programs, relatively low percentages of eligible victims apply and receive awards, and there are a large number of eligibility restrictions. So that group says these programs are failing.

There is another group that says that the programs can only be judged fairly in light of constraints placed on them by legislatures and executive branch agencies such as eligibility criteria, funding shortages, and what have you. These people feel that the programs are doing very well. Because if you look at almost any of these programs, you would see that they consistently increase the number of victims that they serve, their budgets increase even in these fiscally restrictive times, they have relatively low administrative costs, and so that picture looks good, if you view it that way.

The opponents will agree that, yes, all these lines are going up, but they will argue that we are still at the bottom of the graph paper basically and we have a long way to go before we will ever adequately meet the needs of victims. So it is important to keep in mind that there is a very fundamental disagreement about the programs' success or failure.

With regard to the specific aspects of programs, my written testimony presents a whole laundry list of issues that one could consider, and obviously there is not time in the oral testimony to present these. I will just give you a few brief comments on them.

One big battleground is the issue of eligibility restrictions. There have been a lot of arguments about relative and household exclusions, where people are excluded from payment if they are a relative of the offender or live in the same household. There are some ways to get around that problem, and I have talked about them in the report. Means tests have also been argued about a great deal. The question arises whether these are welfare programs that should only serve the poor or should they serve the whole populace? And minimum loss requirements have also been debated considerably, and there has been quite a bit of research on that, and they have been opposed generally. Minimum loss requirements might place a special hardship on the elderly because many are on fixed incomes. Other issues that have been debated recently include the need for improved emergency award procedures; oftentimes the procedures are cumbersome and slow. People are not even aware the procedures exist at times. We probably need reciprocal agreements across States or other procedures to be sure that if you are traveling, you are not disenfranchised from victim compensation.

We need to improve public awareness of programs, although obviously that raises questions about the need for more money since we would get more applications. We need to expedite claims processing. Delays are considerable in some States, and there is a lot of concern about how to develop a fiscal base that is sound and that works, and a lot of programs are moving to fines and penalties funding in order to do that. Thirty-six percent of the States now use only fines and penalties for funding but there are substantial difficulties in collecting these fines and penalties.

In Tennessee, the State collected only $1,000 during the whole first year of operation of the program, and the legislator who sponsored the bill had to actually go around threatening court suits to court clerks in order to get them to start sending the money along. The State of New Jersey has a court monitor who goes out to the courts and makes sure that people are collecting this money.

I think it is also very important that we try to improve coordination between victim compensation programs and other victim services like victim witness assistance programs. New York State, I believe, is helping to lead the Nation in this area. I am delighted that Mr. Zweibel will be testifying later here because they have a great deal to offer in this regard. Our report suggests a number of ways that this coordination could be increased, and I am delighted that Senate bill 704 funds both types of activities.

I would just like to say that we also need to improve knowledge in this area very desperately. We really do not know the impacts of these programs on victims. I think that the many rejections of claims that occur, oftentimes due to technicalities, might be very harmful to many people. If you have already been victimized out in the streets, to go into a program and to have an official say somehow you are not meritorious, you are not worthy, even though you were attacked by a criminal, I think that has to have a very negative impact on a person's psyche. It is bad enough to be victimized without being told that you are not worthy in some way, due to something that you might view as a technicality.

I think it is really something to worry about. We might be hurting some people with these programs as well as helping others, and I think we just badly need to study this. It can be costly to victims, and it is probably costly to the Government as well.

In conclusion, victim compensation programs have spread rapidly across the Nation and around the world. In the coming years, we need to expand the scope of existing programs, we need to insure their fiscal stability and provide expeditious assistance to victims of crime.

One Federal legislator a number of years ago pointed out that "It ill becomes this great Nation to ignore the innocent victims of crime." Concerted efforts across the Nation are helping to dispel the legacy of neglect that the legislator was referring to, and I think if recent history is a reliable indicator, compassionate responses to the claims of victims will continue to increase.

Thank you.

[The prepared statement of Mr. McGillis follows:]

Testimony for Hearings Before the Subcommittee on Aging of the U.S. Senate Committee on Labor and Human Resources

COMPENSATING VICTIMS OF CRIME: AN ANALYSIS OF AMERICAN PROGRAMS

Daniel McGillis
Center for Criminal Justice
Harvard Law School

June 28, 1983

I. INTRODUCTION

I am honored to have the opportunity to testify before the Subcommittee on Aging of the U.S. Senate Committee on Labor and Human Resources on the topic of victim compensation. I am the Assistant Director of Harvard Law School's Center for Criminal Justice, and during the past year I completed work on a national study of American crime victim compensation programs. The study was coauthored with Patricia Smith and was sponsored by the National Institute of Justice of the U.S. Department of Justice; the study was conducted under a contract to Abt Associates Inc., Cambridge, Massachusetts.

The topic of crime victim compensation has received considerable national attention in recent years, and since 1965 victim compensation programs have been developed in thirty-six states and the District of Columbia. At the federal level, crime victim compensation legislation has been repeatedly proposed and has been the subject of extensive Congressional debate and investigation. In light of these developments, the Attorney General's Task Force on Violent Crime recommended in its Final Report in September, 1981, "The Attorney General should order that a relatively inexpensive study be conducted of the various crime victim compensation programs and their results." The present study was designed in response to the Task Force mandate and has sought to address the following basic issues regarding crime victim compensation programs:

1. the current extent of program development across the United States, including descriptions of program policies and procedures;
2. the relative advantages and disadvantages of different program structures and operating procedures;
3. the costs of the various state programs and their sources of funding; and
4. factors influencing federal and state legislative efforts to develop victim compensation statutes.

Project Advisory Board

Five persons have served on the Advisory Board of the study and have provided the project staff with valuable advice. The Advisory Board members are: Mr. Robert Bucknam, U.S. Department of Justice liaison for the Attorney General's Task Force on Violent Crime; Mr. Frank Carrington, a member of the President's Task Force on Victims of Crime; Professor Gilbert Geis, a faculty member of the University of California, Irvine; Mr. Richard Gross, North Dakota Crime Victims Reparations Program Director and former President of the National Association of Crime Victim Compensation Boards; and Mr. Ronald Zweibel, New York Crime Victims Board Director and current President of the National Association of Crime Victim Compensation Boards.

Methods Used to Conduct the Study

Major data collection efforts associated with the present study have included:

(1) A national telephone survey of project directors of victim compensation programs to gather information regarding program characteristics and operating procedures. The results of the phone survey were summarized in a series of seven matrices describing the policies and procedures of programs across the nation. These matrices were reviewed by program project directors for errors or omissions and the information was updated in light of the directors' comments. These validated matrices appear in the study's final report.

(2) A telephone survey of legislative policymakers in states not currently having victim compensation programs to determine what attempts (if any) there had been in the past to develop programs and what plans (if any) existed for the development of such programs in the future.

(3) A review of available research studies on the topic of victim compensation, including those exploring the relevant legal, political, and economic factors involved in the development of such mechanisms.

(4) A review of the legislative histories of the various federal bills that have been proposed to support victim compensation programs, and a review of the legislative histories of selected state victim compensation statutes to provide insights regarding the range of views held regarding such programs and their rationales.

(5) Site visits to six state programs to obtain detailed information regarding the operations of selected programs and to attempt to determine their strengths and weaknesses. Given the range of goals of the study noted earlier, the sites were selected to maximize the collection of relevant information to meet the various goals, and to provide detailed case study information to supplement the telephone review of program characteristics.

The six sites (New York, New Jersey, Florida, Tennessee, Montana, and California) were recommended to the members of the study's advisory board and approved by them prior to the visits. The site visits were conducted during April, May, and June of 1982. During the site visits project directors and their staffs were interviewed, project forms and written materials were collected, and relevant legislators were interviewed when possible.

As was noted earlier, the Attorney General's Task Force on Violent Crime recommended the conduct of a "relatively inexpensive study" of victim compensation issues. This study provides highly detailed descriptive information regarding existing programs, but resource and time constraints precluded the possibility of an intensive evaluation of program impacts, including an assessment of the perceptions of programs by victims, justice system agencies and others. Furthermore, data summaries were developed from information provided by the projects and have not been collected independently by evaluators.

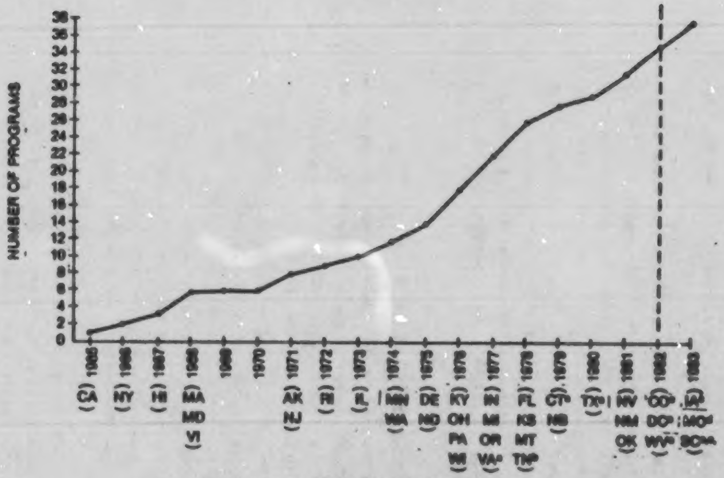
Program Development in the United States

In the United States, interest in victim compensation legislation grew rapidly in the mid-1960s. Federal legislation was proposed in 1964 by Senator Ralph Yarborough of Texas, and in 1965 California became the first state to develop a victim compensation program.

Since the development of the California program in 1965, victim compensation programs have spread rapidly across the nation. Exhibit 1.1 presents a graphic summary of the trend in program development from 1965 to 1982. The number of programs in operation are noted on the left side of the graph, and the years that programs were initiated are noted along the bottom of the graph. The growth in the number of states having programs has been impressive, and the later 1970s were particularly active years for program development.

Exhibit 1.2 presents a graphic summary of the extent of crime victim compensation program development in the United States. The diagonal lines indicate states in which programs are currently in operation, and the dashed lines indicate states which are currently implementing programs. Exhibit 1.3 provides a listing of the states having operational programs,

EXHIBIT 1.1
Trend in Program Development



YEAR OF PROGRAM DEVELOPMENT
(# JURISDICTIONS ESTABLISHING NEW PROGRAMS)

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[a] This date represents the effective date of the program, though in Virginia, Connecticut, Texas, West Virginia and South Carolina, funds were established some period of time (6 months to one year) prior to the actual onset of claims processing and award payment.

[b] Tennessee originally passed legislation in 1976, but the statutes were amended in 1977 to make the effective date July 1, 1978.

[c] Four jurisdictions – South Carolina, Iowa, District of Columbia and Colorado – have just passed legislation and are in the process of setting up programs.

[d] The Missouri program is being established in 3 phases:
1) Assessment and collection of criminal penalties for Crime Victims' Compensation Fund, effective September 28, 1981;
2) Eligibility of claimants effective July 1, 1982; and
3) Claims processing and award payment effective January 1, 1983.

Exhibit 1.2

Pattern of Program Implementation in the United States

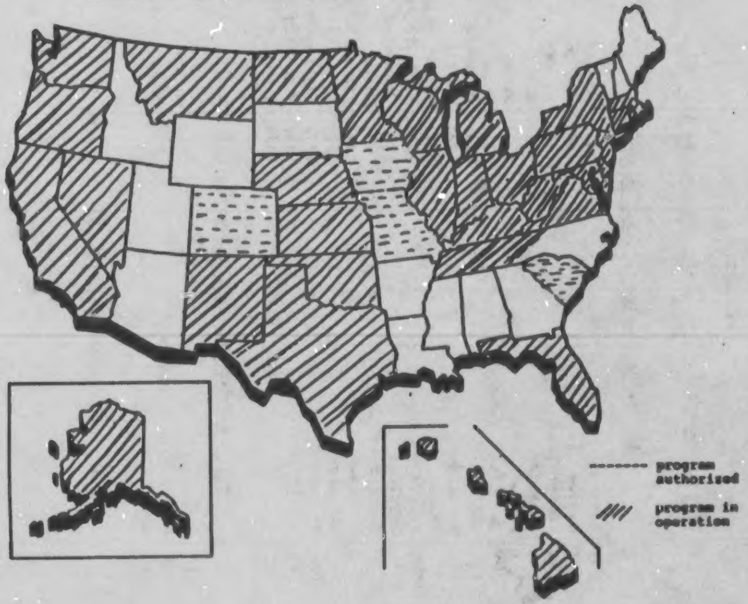
------- program authorized
//// program in operation

Exhibit 1.3

Victim Compensation Program Locations in the U.S.

States Having Operational Programs

(1) Alaska
(2) California
(3) Connecticut
(4) Delaware
(5) Florida
(6) Hawaii
(7) Illinois
(8) Indiana
(9) Kansas
(10) Kentucky
(11) Maryland
(12) Massachusetts
(13) Michigan
(14) Minnesota
(15) Montana
(16) Nebraska
(17) Nevada
(18) New Jersey
(19) New Mexico
(20) New York
(21) North Dakota
(22) Ohio
(23) Oklahoma
(24) Oregon
(25) Pennsylvania
(26) Rhode Island
(27) Tennessee
(28) Texas
(29) Virgin Islands
(30) Virginia
(31) Washington*
(32) West Virginia
(33) Wisconsin

States In Which Programs Are Being Implemented

(1) Colorado
(2) District of Columbia
(3) Iowa
(4) Missouri
(5) South Carolina

States With Legislation Under Consideration

(1) Louisiana

States That Do Not Have Programs

(1) Alabama
(2) Arizona
(3) Arkansas
(4) Georgia**
(5) Idaho
(6) Maine
(7) Mississippi
(8) New Hampshire
(9) North Carolina
(10) Puerto Rico
(11) South Dakota
(12) Utah
(13) Vermont
(14) Wyoming

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*The Washington program was refunded by the state legislature on 3/18/82; it had been temporarily closed due to a reduction in its appropriation.

**Georgia has a statute that provides for compensation to "Good Samaritans."

NOTE: 53 jurisdictions are included in this table: the fifty states, the District of Columbia, the Virgin Islands and Puerto Rico.

those implementing programs, those in which legislation is under consideration, and those that do not have programs. The five states that are listed as currently implementing programs passed crime victim compensation legislation in 1981 and 1982 and are accruing funds for program operations and developing claims processing procedures.

II. FINDINGS AND CONCLUSIONS

Victim compensation programs have spread rapidly in recent years, and a wide variety of types of programs have been developed across the nation. Major issues in the field include differences in program rationales, means to assess program achievements, program structure and organization, eligibility and coverage policies, procedures, costs and funding mechanisms, coordination with other victim services, and potential impacts upon victims. Each issue is reviewed briefly in turn.

Program Rationales

Victim compensation programs have been developed for a variety of reasons. The major rationales for programs include notions that citizens have a right to be compensated if the state fails to protect them (based upon legal tort theory and contract theory analogs), beliefs that programs are an appropriate humanitarian response by government to compelling human needs (including both "insurance theories" that suggest all aggrieved citizens should receive assistance and "welfare theories" aimed only at the poverty stricken), and rationales based upon potential byproducts of victim compensation such as improved citizen cooperation with law enforcement, greater visibility of crime's costs and consequent increased incentives for crime prevention, and the like.

Very few, if any, of the state victim compensation statutes reflect a pure manifestation of a single, highly articulated rationale for program development. Most of the bills are promoted with appeals to combinations of rationales, and sometimes virtually all of the potential rationales can be found woven somewhere into a single legislative debate. As a consequence, it is typically not clear once a program has been enacted exactly how broad its mandate really is. Legislative sponsors in some jurisdictions clearly reject, on the record, the idea that the state has a legal obligation to compensate all victims, and in some debates the insurance theory is soundly rejected in favor of the welfare model. Generally, however, the precise goals of the programs are left somewhat vague, with varying rationales coexisting on the record all in support of the same legislation, even though rationales may be inherently incompatible (e.g. insurance theories and welfare theories).

Such ambiguities are not uncommon in legislation and are, in part, a natural response to the need to form coalitions in support of a bill.

Furthermore, in the case of victim compensation legislation, concern regarding the potential growth in program costs that could arise from a clear and broad rationale has likely made the stating of such a rationale less attractive. Cost containment procedures incorporated in legislation (e.g. various eligibility requirements and benefit restrictions) often have an ad hoc quality to them. The restrictions could typically not be derived from broad principles justifying program development but yet are often necessary for passage of the legislation. While many legislators are attracted to bills assisting victims, they tend to be cautious in designing programs and do not wish to sign a blank check for such assistance.

The ambiguities in victim compensation legislation rationales has led a number of observers (e.g. Hofrichter, 1978 and Mueller, 1965) to note that typical program rationales could support much broader forms of assistance than are presently provided. Professor Mueller suggests that the outer limit of such assistance could involve compensation for all losses attributable to crime, assistance that could require approximately seven percent of the American gross national product according to Mueller's calculations. A more typical view of program outer limits is the position that assistance should be available to all innocent persons injured by crimes, without potential disqualifications based upon such factors as links to the offender, financial condition, and related restrictions.

Assessing Program Achievements

The lack of precision in the stated goals of victim compensation programs can make assessment of their achievements very difficult. If program achievements are compared to the potential goals deriving from broad theoretical rationales, their performance is not satisfactory. Programs are low in visibility in most jurisdictions, and only a small fraction of eligible victims of crime are aware of the programs and apply for assistance. Some persons who are aware of programs choose not to apply due to the complex filing procedures and the need in some jurisdictions to provide detailed accounts of personal finances. Furthermore, many of those who do apply for assistance are rejected due to program restrictions. Some of these restrictions are considered appropriate by virtually all observers (e.g. the requirement that the victim be innocent and not the cause of the victimization) while others are often opposed (e.g. the rejection of applications because the victim is related to the offender even though they may otherwise be innocent victims).

If, instead, program achievements are compared to the far more modest goals often inherent in their structure and policies, many programs appear to be quite successful. The common reductions in scope imposed at the outset on many programs include limited capacities to advertise their services (or actual prohibitions against advertising in some cases), detailed restrictions on victim eligibility depending upon the nature of the crime, the relationship to the offender, financial means, filing deadline adherence, collateral source payments, contributory misconduct, and the like, and limitations on the types and amounts of benefits payable to victims. When judged within the bounds of these inherent restrictions many programs have performed very well, serving increasing numbers of victims over time, increasing their total award payments even in times of budgetary cutbacks, operating with low administrative costs compared to their overall budget and yet maintaining strict cost accountability, and seeking to sensitively respond to the needs of victims. Such achievements are chronicled throughout the report in discussions of program operations and funding.

In short, whether one views the programs as successes or failures depends mainly upon one's view of the legitimate goals of victim compensation mechanisms. Persons praising current program operations point to the typical annual report graphs demonstrating increases in program caseloads, budgets, and staff size. Critics of the programs may agree that many of the graph lines are trending upward but stress that the gap between the actual levels of performance and needed levels of performance are enormous. They essentially use much larger graph paper and suggest that the programs have barely left the bottom of the chart in their achievements and have far to go before being judged adequate.

This complex disagreement regarding legitimate program aims makes it very difficult to answer the question, "how are the programs doing?" If policymakers stress limited goals of programs in light of legislative restrictions, then assertions of success in many programs are probably accurate. If policymakers instead state their support for broad rationales for their programs (such as humanitarian assistance to all injured victims) and then do not provide the means to attain such goals but in fact hobble their achievement through myriad eligibility restrictions and underfunding, assertions of program success are less credible. Critics charge that such actions suggest an interest by some in developing "paper" programs that provide compelling campaign speech material without fulfilling the stated goals of the programs. Such mismatches between rhetoric and program structures are considered triumphs in the elevation of form over substance in political action.

Since victim compensation programs are ultimately the product of the political arena, proponents of broad rationales for programs need to convince legislators of the merits of the rationales and need to stimulate active public support in favor of broadening victim compensation program coverage. At present, existing programs represent compromises between the broad theoretical rationales offered for them by some and more restricted visions of proper program aims. Proponents of broad coverage typically find through the course of legislative action that program structures and policies evolve in subtle and complex ways, and the final program features ultimately reflect whatever the political market will bear. In many states passage of a victim compensation bill in virtually any form is a notable achievement and is the result of very substantial work by the bill's sponsors and supporters. Persons advocating broad program coverage typically feel that the passage of even highly limited victim compensation legislation is worthwhile in a state. Such programs provide a foundation upon which a later, more comprehensive program can be built.

Program Structure and Organization

Victim compensation programs can be developed in a variety of ways. Program sponsorship varies considerably across the nation. Worker's Compensation departments are the single most prevalent program sponsors (8 programs) followed by the courts (7 programs), and departments of public safety (5 programs). A variety of additional agencies serve as sponsors (e.g. departments of social services, governor's executive offices, etc.). Attachment A summarizes program sponsorship and affiliation. Program staff in some programs are fully integrated into existing agencies and in other cases are quite independent from the agencies. A review of the various models of program sponsorship and affiliation suggests that no one model is clearly more advantageous than any other, although certain court-based programs, and especially those adjudicating claims in general trial courts, appear to confront special problems.

A number of aspects of program structures and organization warrant close attention in coming years. These emerging issues include:

(1) The Question of Decentralization of Program Operation. Colorado is currently implementing legislation that will result in the state having the first totally decentralized victim compensation program. Each judicial district will collect funds for victim compensation and distribute them to appropriate victims of crime. Similar proposals have been made in recent years in Florida and California. Major advantages cited for decentralized program operation include increased fairness within regions of the state in fund collection and disbursement, potentially speedier claims verification and investigation, and potentially improved coordination with local victim witness services. Possible disadvantages include variations in the availability of funds for victims payments across localities, probable inconsistencies in award decisions across jurisdictions, and the problem of duplicating program administrative costs in the various state jurisdictions. It is too early to determine whether decentralized victim compensation services can, in fact, be effective, and the Colorado experiment bears close watching. The likelihood of considerable disparities across localities in claims decision-making and high administrative costs should certainly make states very cautious about adopting such a model, and successful operation of such a mechanism in one or more states should occur prior to any widespread replication of the approach.

(2) Program Staffing. It is difficult to determine optimal program staffing arrangements in the absence of highly detailed research on the effectiveness of different approaches. Our study suggests that the development of an autonomous core program staff responsible for the three major functions of victim compensation programs (administration, investigation, and decision-making) is preferable to the dispersion of such functions across a number of agencies. The major problems faced by court-based programs that disperse these functions across two or more agencies are noted in the report.

Program Eligibility and Benefits Policies

Common major eligibility restrictions deal with residency requirements, the role of contributory misconduct, requirements related to the relationship of the victim and the offender, the nature of compensable crimes, financial hardship requirements, rules regarding crime reporting and cooperation with law enforcement officials, and filing deadlines.

All victim compensation programs restrict the types of financial losses that are compensable. Typically programs are authorized to reimburse victims for medical and/or funeral expenses incurred as a result of a crime, and also to compensate for lost wages or loss of support to the dependents of a deceased victim. Almost all programs provide reimbursements for counseling expenses incurred as the result of a victimization incident. In most cases, these are paid as an additional medical expense, though in some cases a special clause is included in the statute. In a few states, such as in Massachusetts and Virginia, counseling costs are only recoverable in cases of sexual assault. The size of awards programs are authorized to provide vary considerably, and Attachment B presents a summary of maximum award policies.

Major emerging issues regarding eligibility and benefits policies include:

(1) The Appropriateness of Relative and Household Exclusions. A policy of excluding compensation for relatives of the offender and persons living in the same household as the offender was adopted in the New Zealand statute and widely replicated in American programs. Senator Yarborough (1965) questioned the appropriateness of such a blanket exclusion at the time programs were first being developed in the United States. Since that time many observers have noted the problems with such policies. A number of states are allowing compensation to such formerly excluded classes of victims if the awards do not result in the "unjust enrichment" of the offender. Such reforms can enable programs to avoid the considerable injustices that often occur in the administration of blanket relative and household exclusions.

(2) The Proper Role of Financial Means Tests. A variety of policymakers have strongly opposed the use of financial means tests by victim compensation programs. One-third of the programs currently in operation require that victims suffer substantial financial hardship before they are

eligible for compensation. Efforts to enforce these provisions vary widely. Policymakers need to carefully consider their underlying rationale for program development in implementing such provisions. The use of a means test implies a "welfare" rationale for victim compensation; the absence of such a requirement implies other rationales (e.g., an insurance model, torts and contracts models, etc.). A number of states are considering eliminating the means test due to the high costs of investigations regarding financial hardship, the gross inequities that can occur in denying benefits to victims (especially the elderly on fixed incomes) who have been diligent in saving money, and the chilling effect that such means tests can have on all victims, even those experiencing severe financial hardship, who might otherwise apply for compensation.

(3) Minimum Loss Policies. Considerable controversy has occurred in recent years regarding the appropriateness of minimum loss policies. The majority of programs (58%) have adopted such requirements, and the minimum loss required is typically $100 or two continuous weeks of lost earnings. Such policies are adopted to reduce administrative costs and case backlogs. Opponents of such policies have argued that they discriminate against certain classes of victims (e.g., rape victims, the elderly and the disabled). Some states have begun to exempt such victims from the minimum loss provisions. Other states (e.g., Illinois, Kentucky, New York, and Wisconsin) are seeking to eliminate the minimum loss requirement altogether. Such elimination may have a variety of beneficial effects on programs, including increased program awareness and support. Garofalo and Sutton (1977) have investigated the costs of eliminating minimum loss requirements and suggest that programs could serve many more victims with only a 12% increase in program costs if the requirements were eliminated. Programs should consider eliminating or limiting minimum loss policies.

(4) The Adequacy of Emergency Award Procedures. Emergency award procedures are often very ineffective in America's victim compensation programs. Programs should advertise the availability of emergency awards, expedite their processing, and if possible develop a capability within the program to draft checks for such payments in those cases where the claim appears meritorious and a need exists for rapid assistance. Such reforms would not be likely to be very costly, and just as in many court cases "justice delayed is justice denied," payments delayed often become virtual denials of

the benefits of victim compensation. During extended delays victims are required to suffer pressure from creditors while they are also suffering from their victimization. A payment one year after the victimization may be better than nothing, but often not a great deal better. Improved emergency award procedures should become a high priority of victim compensation programs. In many cases legislatures have provided programs with the means to cut the red tape entangling emergency award requests; programs need to fully implement these emergency award mechanisms. Attachment C summarizes existing emergency award policies.

(5) Reciprocal Compensation Agreements Among States. Fifteen state victim compensation programs have developed reciprocal agreements with other states, and these states will compensate the others' residents when victimized within their jurisdiction. Such agreements seem very appropriate in a mobile society such the the United States and eliminate unfortunate instances in which victims are ineligible for compensation simply because they are not victimized within their home state. Such reciprocal agreements should be strongly considered by all victim compensation programs.

(6) Property Loss Provisions. One controversial type of loss that is not typically covered by victim compensation programs is property loss. Only Hawaii and California consider this a recoverable loss, and then only for so-called Good Samaritans. There are two main reasons for this exclusion: 1) the belief that loss of property is less devastating than physical injury; and 2) the fear that the costs of such compenstation would be astronomical, due to the large proportion of crime in our nation that involves damage to or theft of personal property.

In many states, even the costs of replacing eyeglasses, hearing aids and other prosthetic devices are not covered under the victim compensation statutes. For many individuals, especially the elderly, such losses are devastating and often impossible to handle on a poverty-level or fixed income.

Close to two-thirds of existing program statutes include a provision allowing recovery of "other reasonable expenses." This category of losses is sometimes used to allow for reimbursement of the costs of replacing eyeglasses, hearing aids and other prosthetics. In addition, this provision has been cited in the payment for transportation, ambulance services, child care, relocation costs for rape victims and a variety of other expenses incurred as the result of criminally injurious conduct. Including such a flexible provision in the statutes allows the program to exercise greater discretion in providing for the needs of crime victims, and such flexibility should be encouraged.

Program Procedures

The victim compensation study final report presents a summary of major program procedures, including those dealing with public awareness, claims application, claims verification, case processing time, award payment and appeals. A number of emerging issues regarding claims processing require attention, including:

(1) The Lack of Public Awareness of Victim Compensation. The various techniques for making victims aware of the availability of victim compensation services include general advertisements and notification of victims by law enforcement personnel, medical providers, and victim/witness assistance programs. Many programs are not widely advertised due to a concern that sufficient funds are not available to pay all eligible victims in the state. This lack of public awareness of programs in many states is perhaps the most critical issue for victim compensation programs.

The hesitancy of legislators and program administrators to encourage the filing of legitimate claims that may not be paid due to lack of funds is understandable. But this hesitancy strikes at the heart of the victim compensation enterprise and raises the question of whether states are willing to back up the high-sounding rationales for programs with adequate financing. The failure to announce the availability of certain other forms of relief (e.g., vaccine during an epidemic) would be considered a scandal. The failure to make victim compensation broadly available is also viewed as a scandal by proponents of such programs. States should review their current policies and funding mechanisms and seek to close the gap between program rationales and actual program operations. Innovative funding sources outside of general revenues may enable states to fulfill the broad goals presented in typical victim compensation legislation.

(2) Expediting Claims Processing. Victim compensation programs often experience considerable delays in case processing. Average claims

processing times are summarized in Attachment D. Such delays inevitably lead to dissatisfaction on the part of victims and reduce the value of the payment to victims since they were required to endure an extended period of uncertainty regarding payment and, perhaps, strong pressure from creditors. The final report provides a review of structural, policy-related and/or procedural factors that can contribute to delays in case processing. Suggestions are provided to expedite claims processing, including the use of abbreviated procedures in certain types of cases (e.g., small claims and funeral expense requests), revised case investigation procedures, and more rapid drafting of checks once the claim has been awarded. Such improvements may be helpful in reducing the delays experienced by many programs.

Program Costs and Funding

Victim compensation programs receive funding from a variety of sources. Thirty-nine percent of existing programs are funded solely through general revenues, 36% are funded solely through fines and penalties mechanisms, and 24% through combinations of general revenues and fines and penalties. Program costs for payments to victims and administrative expenses are summarized in Attachment E, and Attachment F presents a summary of average awards given by programs. A number of issues regarding funding mechanisms require attention, including:

(1) The Propriety of Fines and Penalties Mechanisms. Sixty percent of current state victim compensation programs are funded solely or in part through revenues from fines and penalties. Major forms of such mechanisms, include fixed penalties, proportional surcharges, and discretionary penalties. A number of critics have suggested that fines and penalties are an inappropriate approach for funding victim compensation programs. These critics feel that such mechanisms violate citizens rights to equal application of the laws and require convicted offenders to pay for programs that they have no greater obligation to support than any other citizens. Such reasoning has led to court challenges of such mechanisms in Florida. The court upheld the appropriateness of such a funding approach. Additional challenges may be anticipated across the country, however, and the technique of fining traffic offenders to pay for victims of violent offenses is particularly controversial. Further court action may clarify the proper role of such mechanisms, and programs should be prepared to argue in favor of such funding if necessary.

(2) Techniques for Collecting Fines and Penalties Revenue. A variety of approaches to encourage the collection of fines and penalties revenue have been developed. One of the most promising new approaches is the use of a court monitor in New Jersey to audit court dockets and determine if the courts are, in fact, levying the appropriate fines. In New Jersey, the Administrative Office of the Courts supports the victim compensation program and assists it in ensuring that courts comply with the mandated penalty assessments. Other states that face problems in collecting fines and penalties may wish to consider a similar approach. A strong centralized judicial authority's support may be needed to make such a monitoring system effective.

(3) Possible Additional Funding Sources Other Than Fines and Penalties and General Revenues. A variety of additional possible funding mechanisms exist other than fines and penalties and general revenues. Major examples include restitution payments, civil suits brought against the offender, civil suits brought against third parties, property forfeiture revenues, and Son-of-Sam provisions to acquire profits from offenders' royalties resulting from commercial publication of the facts of the crime. None of these mechanisms appear to be particularly promising sources of revenues for victim compensation programs, but programs may wish to consider the development of such mechanisms for obtaining limited supplementary funds for program support.

Coordination with Additional Victim Support Services

Many options exist for coordinating victim compensation program services with those of other victim support agencies such as victim witness assistance programs, crisis service programs and victim hotlines. Possible approaches to link the programs include the sharing of information regarding referrals, the training of personnel in other programs to assist in victim compensation case screening, the development of statewide coordinating agencies, and the like.

The coordination of victim services is likely to be easier in theory than in practice. As in virtually every service area with multiple providers, victim compensation and victim/witness assistance programs do not always cooperate and sometimes feel in competition. Personnel affiliated with both types of programs tend to have somewhat different philosophical orientations towards victims and to believe strongly that their service is of particularly great value to victims. Such commitment is valuable and perhaps necessary if people are to perform well and vigorously provide services. This commitment inevitably leads to "turf" problems in an era of shrinking resources, however. An effort will need to be made to overcome the "turf" problems currently in existence and to persuade programs that they can benefit one another and victims through increased cooperation. It is critical that program administrators and staff attempt to look beyond the rivalries of programs to ways to best attain their common goal: aid to crime victims. The development of collaborative enterprises such as victim hotlines, which simultaneously provide referrals to both types of programs, may help to overcome some resistance to increased coordination. Adequate levels of funding for both victim compensation and victim/witness assistance programs by state legislatures would greatly enhance program cooperation, and such funding can be coupled with statutory requirements of collaboration akin to those provisions that are in operation in California, Wisconsin, Nebraska, and elsewhere. American crime victims have myriad, complex problems, and a coordinated effort among various service providers is needed to address the full range of economic, psychological, and related problems experienced by victims.

Program Impacts Upon Victims

Very little information is available regarding the impact of victim compensation programs upon victims. Recent limited research studies suggest that contact with victim compensation programs does not clearly improve victims' attitudes toward the criminal justice system. Such an outcome is hoped for by some program proponents, since programs wish to encourage improved cooperation with justice system agencies.

Detailed information is not available regarding the impact of programs on victims' economic or psychological well-being. Information is needed regarding the impact of specific program eligibility policies and procedures on victims. Victim compensation applicants rejected due to a technicality certainly feel victimized once again, and the force of an official agency stating that they are not worthy of assistance (e.g., because they are related to the offender) could be very distressing. Even persons receiving compensation can legitimately feel angered or diminished if they were treated brusquely, had their finances and related circumstances investigated insensitively, experienced extensive delays in case processing, or

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received only a fraction of their requested claim due to reasons they feel are unjust. A program offending or distressing a large number of innocent victims through overly complex procedures, rejections due to factors considered to be 'mere technicalities' by the average citizen, and similar practices could result in a net harm to victims' sense of well-being in their community rather than an improvement. The virtually total lack of information on this topic is striking, particularly in light of the relatively large amount of money spent yearly on victim compensation administration and awards. Research on such issues is badly needed if program policies are to be refined by legislatures with the concrete needs of victims in mind rather than simply through hunches, anecdotes, and whim.

At present many state legislatures are likely to resist such research expenditures, due to an undertandable concern with the value of "just another study." But the vacuum of information on this issue makes research on victim impact not just "another" study, but virtually the "first" such study. Opposition to research that is redundant, arcane, or otherwise seriously flawed is laudable; it is more difficult to praise the championing of what amounts to ignorance. In a critical area of public policy, ignorance can potentially be far more expensive than research. Perhaps some states can commission relatively modest studies and encourage social science graduate students to conduct them as part of their doctoral dissertation research. Such an approach might successfully drive down both the costs of research and the costs of ignorance.

III. SUMMARY

Victim compensation programs have spread rapidly across the United States and have also been developed in many nations around the world. Such programs have gained broad support, and further growth in the number of programs and the size of existing programs appears likely. Programs have assisted a large number of innocent victims and are likely to continue this valuable service.

Some likely program trends include increased flexibility in eligibility criteria (including those dealing with relative and household exclusions, financial means tests, and minimum losses) and increased use of fines and penalties mechanisms for funding rather than general revenues. Major problems faced by programs include improving public awareness, broadening eligibility requirements, expediting claims processing and improving emergency award procedures.

Most of the problems experienced by victim compensation programs have their roots in a lack of funding, and steps should be taken to provide sufficient funds to programs so that they can begin to fulfill their promise of compensation to all eligible innocent victims. Federal legislation to assist programs has been proposed repeatedly during the past two decades and merits careful consideration as one possible means of helping programs meet their obligations to victims. Given the very tight limitations on the federal budget, sources of victim compensation funding other than general revenues (e.g., federal fines and penalties and forfeiture revenues) warrant particular consideration. This project's final report presents a detailed discussion of the previous Congressional efforts to pass victim compensation legislation and notes the major barriers such legislation has faced.

Victim compensation mechanisms have become widely accepted in the past two decades. Programs have been developed in states across the nation due to the dedication of hundreds of legislators and other citizens. The major task in the coming decades will be to expand the scope of existing programs, insure their financial stability, and seek to provide consistently expeditious and effective assistance to victims. A federal legislator noted years ago that, "It ill becomes this great Nation to ignore the innocent victim of crime." Concerted efforts in state houses, victim compensation programs, and elsewhere are helping to dispel the legacy of neglect, and if recent history is a reliable indicator, such compassionate responses to the compelling claims of crime victims will continue to increase.

ATTACHMENT A

PROGRAM SPONSORSHIP AND AFFILIATION

CATEGORY OF SPONSORING AGENCY	STATES		(TOTAL N = 33) N	PER-CENT
Department of Public Safety or Protection	Alaska Kentucky Maryland[a] Minnesota[a] New Jersey[a]		5	15
Workmen's Compensation or Industrial Safety Board	Florida Indiana Montana North Dakota	Oregon Texas[c] Virginia Washington	8	24
Courts/Judiciary	Delaware[a] Illinois[b] Massachusetts[b] Ohio[b]	Rhode Island Tennessee[b] West Virginia[d]	7	21
Social Services or Welfare Agency	Hawaii Virgin Islands		2	6
Criminal Justice Administration/ Department of Justice	Kansas[a] Nebraska Oklahoma[e] Wisconsin		4	12
Department of Management or Budget	Connecticut Michigan[a]		2	6
Governor's Executive Offices	New York[a] Pennsylvania		2	6
Other	Nevada (State Bd. of Examiners) California[e] (State Bd. of Control)		2	6
No Affiliation	New Mexico[a]		1	3

[a] Functionally Independent (N = 8; 24%).

[b] Multiple affiliations -- Courts (N = 4; 12%).

[c] Multiple affiliations -- Courts and Administrative agency; Attorney General provides investigation (N = 1; 3%).

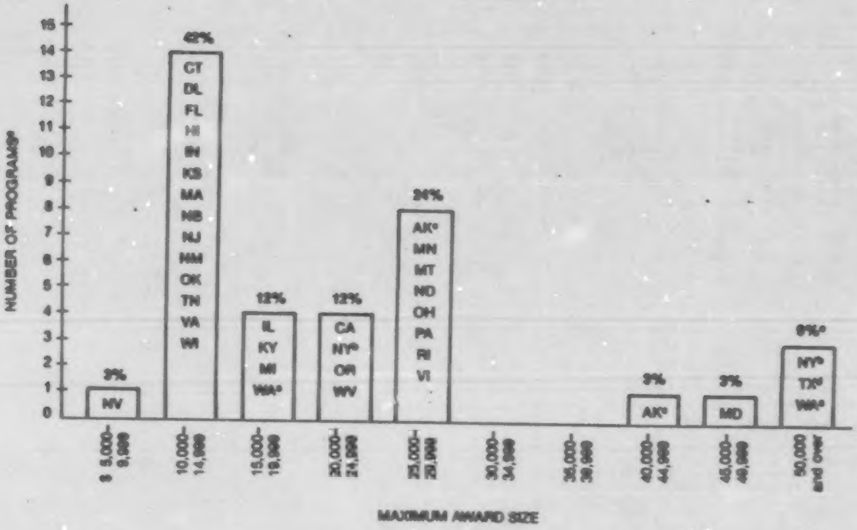
[d] Multiple affiliations -- Attorney General provides investigation and Court of Claims makes decisions; but legislature must approve all claims before payment (N = 1; 3%).

[e] Some investigative component provided by victim/witness assistance programs (N = 2; 6%).

[b,c,d,e] Total number of programs with multiple agency affiliations is 6, or 18% of total programs.

ATTACHMENT B

MAXIMUM AWARDS



[a] Washington imposes no limit on medical expenses, but pays up to a maximum of $15,000 for all other expenses.

[b] New York has a $20,000 limit on lost earnings or support, but also has no maximum allowable award for medical expenses.

[c] Alaska has a general maximum of $25,000, but allows up to $40,000 in cases where there are multiple dependents.

[d] Texas has the highest maximum allowable in the U.S.: $50,000.

[e] Totals are inflated due to double-counting of AK, NY, and WA.

ATTACHMENT C

EMERGENCY AWARDS

STATE	MAXIMUM NONE	500	1000	1500	PROCESSING TIME
Alaska				X	3-5 days minimum
California			X		60 days
Connecticut		X			one day
Delaware	X				—
Florida		X			30 days
Indiana		X			1-2 weeks
Kansas	X				2 weeks
Kentucky		X			—
Maryland			X		—
Michigan		X[a]			—[a]
Minnesota	X[b]				—[b]
Nebraska		X			2-3 weeks
New Jersey				X	—
New Mexico	X				—
New York				X	—
North Dakota			X		—
Ohio	X				—
Oklahoma		X			one week
Oregon			X		3-4 weeks
Pennsylvania			X		several months
Tennessee		X			4-6 months
Texas				X	3-5 days
Virginia			X		1 month
Wisconsin		X			1-2 days
N = 24 73% (of total programs)	N=5 21% (of programs offering emergency awards)	N=9 38%	N=6 25%	N=4 17%	

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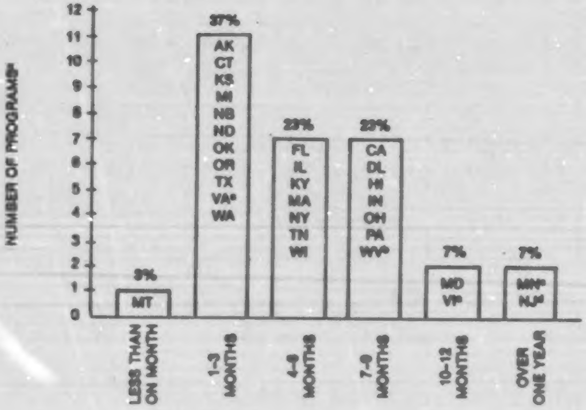
[a] Michigan has discontinued payment of emergency awards due to budget cuts and limited staff.

[b] Minnesota pays only lost wages on an emergency basis. However, no such payment has been made in the last year.

ATTACHMENT D

AVERAGE CLAIMS PROCESSING TIME



CLAIMS PROCESSING PERIOD

[a] An additional 2–3 weeks is required in Virginia to process checks. In the Virgin Islands, this adds a month to the time the victim waits for compensation.

[b] After the West Virginia program processes a claim, the claimant must wait up to 9 months for legislative approval of the award (legislature meets annually for 3 months).

[c] Minnesota reports an average claims processing time of 13 months.

[d] New Jersey reports a backlog pending from 2–4 years ago. New cases can take anywhere from 6 months to 2 years to process.

[e] Total is less than 33 because average processing time figures are unavailable for Nevada, New Mexico, and Rhode Island.

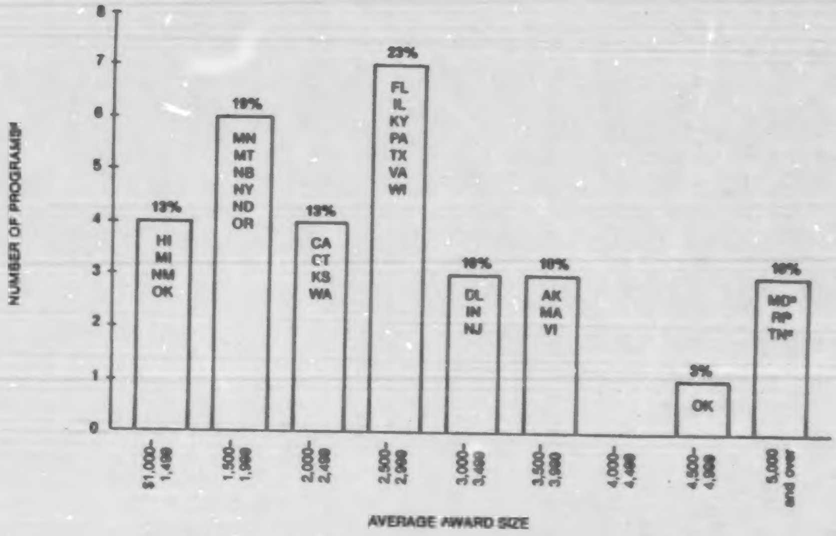
ATTACHMENT E

PROGRAM COSTS

COST CATEGORY RANGE OF COSTS	TOTAL PAYMENTS TO VICTIMS	TOTAL ADMINISTRATIVE COSTS	TOTAL COSTS
Less than $20,000	NH ($ 7,427) OK (14,960)	VI ($ 16,000)	NH ($ 7,427)
$21,000 to $100,000	ND (57,606) SD (90,373)	ND (42,000) SD (46,772) MT (50,536) VA (54,775) NE (61,083) OK (66,666) NM (73,995) HI (77,410) CT (87,650)	OK (81,626) ND (99,606)
$100,001 to $300,000	VI (121,967) NE (173,942) AK (227,100) RI (238,430) DE (241,804) MT (271,023)	AK (102,000) OR (104,000) DE (140,350) MI (180,195) WI (200,000) IL (232,900) WA (250,000) PA (252,000) TX (263,006)	SD (137,145) VI (137,967) NE (235,025) RI (249,792)
$300,001 to $500,000	KY (410,533) VA (430,687) HI (432,513)	FL (300,000) NJ (400,000)	MT (321,559) AK (329,300) DE (382,154) KY (410,533) VA (485,367)
$500,001 to $700,000	OR (519,000) NM (573,059) CT (632,000)		HI (509,923) OR (623,000) NM (647,064)
$700,001 to $1,000,000 (Small programs - up to $1 million)	TN (801,452) PA (816,000) MA (907,679) TX (989,182)	MD (782,281)	CT (719,650) TN (801,452) MA (907,679)
$1,000,001 to $3,000,000 (Medium programs - $1M to $3M)	WI (1,200,000) MD (1,415,472) FL (1,800,000) MI (1,822,605) NJ (1,953,996) IL (2,078,000) WA (2,378,634)	NY (1,081,730) OH (1,531,279) CA (1,805,438)	PA (1,068,000) TX (1,252,068) WI (1,400,000) MI (1,990,800) FL (2,100,000) MD (2,197,753) IL (2,310,900) NJ (2,353,996) WA (2,628,634)
Over $3,000,000 (Large programs)	NY (5,750,549) OH (7,654,240) CA (15,270,141)		NY (6,832,279) OH (9,185,519) CA (17,075,579)

ATTACHMENT F

AVERAGE AWARDS



AVERAGE AWARD SIZE

[a] Maryland reports an average award of $8,378.

[b] Rhode Island has the highest average award at $12,548.

[c] Tennessee reports an average award of $8,500, which includes payments of attorney's fees.

[d] Only a total of 31 programs are reported here, because average award figures are unavailable in West Virginia and Nevada.

Senator GRASSLEY. You have been right in the middle of it, have you not? Mr. McGillis through your study, and you, Mr. Phillips as a member of the Committee on Victims of the ABA.

I have questions for both of you but I do want to compliment you, Mr. McGillis, on your very exhaustive study, and start out by asking if you found more often than not, State programs are not widely advertised due to the concern that sufficient funds are not available to pay all the eligible victims within their State?

Mr. McGILLIS. Yes; That was my sense in most States that we went to. In fact, a few of the State legislatures have actually prohibited advertising in the program legislation. Those programs still distribute brochures and other material, you know, items that are not considered advertising. There is a gray area as to what an ad is or is not.

Yes, programs are very nervous about that. Understandably so because I guess they are afraid of a run on the treasury or the inability to serve a high percentage of the victims that would come if it was highly advertised.

Senator GRASSLEY. Would it not be almost a natural action on the part of a law enforcement officer who is investigating to somehow want to comfort a victim to remind him of a program like this?

Mr. McGILLIS. I think that happens in quite a few States that law enforcement officers provide information.

Senator GRASSLEY. I mean even if it were not part of their job.

Mr. McGILLIS. I think a lot of them naturally would do that if they are aware of the program and its services. The same thing occurs with medical providers at hospitals; a lot of them are keenly aware of these programs simply because they are fearful that they might not be able to collect, you know, money on the account without the use of the programs.

Senator GRASSLEY. From your standpoint, do a majority of the States have multiple providers of victim assistance compensation, and what are the possible drawbacks of multiple providers?

Mr. McGILLIS. By multiple providers, do you mean separate agencies? I am not quite clear.

Senator GRASSLEY. Yes.

Mr. McGILLIS. Colorado is considering having multiple providers by establishing decentralized system whereby each county would provide victim compensation. All of the States but Colorado, to my knowledge, have a centralized operation. They operate out of the State capital and centralization helps insure consistency in decisionmaking and many other benefits. Centralization can result in some inequities where certain counties might disproportionately provide funds to the pool of money and yet not receive back adequate resources. In Florida, there has been some talk about trying to move toward a decentralized approach because some counties feel that they do not receive their proportional share of funds.

Senator GRASSLEY. I missed your point on whether or not that could be a drawback.

Mr. McGILLIS. To do it in a decentralized fashion?

Senator GRASSLEY. Yes.

Mr. McGILLIS. I think there probably could be a serious drawback because of the uneven decisionmaking that would go on across counties. There would not be much equity, I suspect, if you had different administrators in different counties making these decisions and, ultimately, since everyone is a member of the same State, it seems it would not be fair for an equivalent victim in two adjacent counties to have very different outcomes on their claim.

Senator GRASSLEY. What about the paperwork, is it an obstacle or is it a fairly straightforward process that is easily understood and easy to accomplish?

Mr. McGILLIS. No. The paperwork in some of these programs is enormous. They seek documentation from six, seven, eight different sources. The prosecutor's office, the police, the person's employer, if they have lost wages, medical providers of all sorts, the persons themselves in terms of their fiscal status, if they have a means test, so the paperwork can be enormous. I know California has been trying to experiment with reduced paperwork in certain small claims in order to try to see if they can expedite processing, and they are testing to see how much cheating goes on in those cases. They are taking a sample of these expedited claims and they are doing the full process to see if there is any fraud.

Senator GRASSLEY. Is it easier for victims to receive psychological and social assistance in monetary compensation?

Mr. McGILLIS. To receive financial support for that type of assistance?

Senator GRASSLEY. Yes.

Mr. McGILLIS. Many of the programs will provide funds for psychological and counseling assistance. Oftentimes it will come under some sort of medical benefits or some other clause in the legislation. I am not aware of whether it is more difficult to get that than to get, let us say, straight recompense for lost wages. It seems as though you can get both, depending on the nature of the claim.

Senator GRASSLEY. By the way, Mr. Phillips, if you had any comment you want to make on any of these questions I asked him, you can do that. And vice versa. I have got some points I would like to make with you though.

Do you have anything you want to comment on?

Mr. PHILLIPS. No, sir.

Senator GRASSLEY. You made some very good suggestions in reference to our bill and I want to thank you for that very much because I know that the ABA is very good in many areas but particularly in an area like this, where we are striking out new laws or with very little precedent, and we appreciate it. We are trying to build on a good piece of legislation that just recently passed.

One of the issues brought up was your proposal requiring coverage of those who are injured trying to prevent a crime or apprehend a perpetrator, and I found that to be a good one. Are you aware of whether any States have a provision like that? Or I could ask Mr. McGillis too.

Mr. McGILLIS. I am not aware offhand.

Senator GRASSLEY. And obviously you are not then, Mr. Phillips?

Mr. PHILLIPS. No.

Senator GRASSLEY. A number of policymakers have strongly opposed the use of financial means tests by victims compensation programs. One-third of the programs currently in operation require that victims suffer substantial financial hardship before they are eligible for compensation.

Is there an ABA opinion on applying a means test to victims?

Mr. PHILLIPS. I am not aware of a specific ABA position on that question. We can submit further comments later.

I think that our position, as I indicated, is that victim compensation is not a matter of race. It is not specifically—it should not be limited to those suffering financial hardship because it is designed to try at least to offset the injustice of the crime.

Senator GRASSLEY. Well, if you have any further thought on that, we would appreciate them in writing. I do not know how much work that is for you to get an opinion from your colleagues or committees. But we would appreciate it.

A similar question is what you might think of the minimal loss policies. It is my understanding about half of the States—or about half the programs have such policies where you have to have them, we will say, a minimum of 2 weeks of continued loss of income from your work or maybe a minimum of $100 of loss. Does the ABA support that?

Mr. PHILLIPS. Again I think I would like to submit some written comments on that point.

Senator GRASSLEY. Well, that is perfectly appropriate, and that is all the questions I have for either one of you.

Do either one of you have any closing comments that you want to make or additions? OK. Well, you have been very good. Thank you very much.

Our next panel consists of two State officials in charge of victims compensation programs, Ronald Zweibel is chief administrator of New York's victims assistance program. That is one of the largest in the Nation. And he is president of the National Association of State Crime Victims Compensation Boards. I have a friend testifying this morning, John Shaffner, who wrote the legislation for the victims compensation program in my own State of Iowa, and we are just now getting that off the ground. I should say you are now just getting that off the ground.

We look forward to hearing your State's perspective of these issues we are talking about and I think I will begin the same way I introduced you and ask you to proceed, and remind you I have some questions that I want to ask as well.

STATEMENTS OF RONALD ZWEIBEL, CHAIRMAN, NEW YORK STATE CRIME VICTIMS BOARD, AND PRESIDENT, NATIONAL ASSOCIATION OF CRIME VICTIM COMPENSATION BOARDS, AND JOHN T. SCHAFFNER, LEGISLATIVE LIAISON, IOWA DEPARTMENT OF PUBLIC SAFETY, A PANEL

Mr. ZWEIBEL. Thank you, and good morning, Senator Grassley, ladies and gentlemen. My name is Ronald Zweibel.

As chairman of the New York State Crime Victims Board and president of the National Association of Crime Victim Compensation Boards, I am pleased to have this opportunity to present written testimony for the hearing entitled "Crime and the Elderly: Does Victim Compensation Work?"

In New York State, the Crime Victims Board receives over 8,000 claims annually of which 14 percent are from elderly persons. On a national level, crime victim compensation programs have received well over 36,000 claims of which approximately 11 percent are elderly claims. Since the elderly comprise a significant proportion of the crime victim claims received, I would like to take this opportunity to share my perspective on the elderly as crime victims.

Since you have my written testimony before you, I would like to spend the next few minutes summarizing and highlighting my testimony.

Mr. Chairman, on the basic question you have posed for this hearing, does crime victims' compensation work for the elderly, my answer is a qualified yes. Qualified because inadequate funding and legal restrictions can and do act to severely limit the number of awards as well as the amount and type of financial assistance that can be provided to elderly victims by State crime victim compensation programs. The program administrators have little control over these restrictions and limitations. Moreover, it is difficult to understand how most State governments can be expected, at least in these times of fiscal austerity, to greatly increase financial support for crime victims' programs, particularly if the Federal Government does not carry its share of the funding burden. Of all major social insurance programs presently operating in the Nation, crime victims' compensation appears to stand alone as having no Federal involvement or assistance. Crime is, of course, a national as well as a State problem. There are many program improvements which could be made in existing State programs that will be helpful to elderly victims of crime. Senior citizen organizations have long advocated in New York the elimination of the financial means test, awards for essential property—I might add that that was added to the New York statute this year—and special outreach and claim processing efforts to reach isolated elderly victims. New York and a minority of other States have responded to these requests of senior citizens for special provisions. However, in all candor, I must advise the committee that although crime victim compensation is inexpensive compared to most law enforcement programs, many State programs lack adequate funding to effectively deliver existing program benefits, much less provide for program enhancement.

The New York State Crime Victims Board exhausted its payments to victims funds 8 months into the 1982-83 fiscal year and was required to interrupt payments to crime victims for up to 5 months. Washington State eliminated its program in 1981 for budgetary reasons and just recently reinstated the program. In some States, the victims must wait a substantial period of time to receive payment of their awards due to shortages of funds. This situation is expected to continue and perhaps grow worse in 1984.

The cost of medical services to victims is continuing to soar. The crime rate remains at historical high levels. Applications for assistance are ever increasing. Federal assistance for some State programs may be a necessity just to maintain the existing level of services. In light of this situation, I would like to commend both Senator Grassley and Senator Heinz for their support of Federal assistance to State compensation programs and for their 1983 legislative initiative, Senate bill 704.

In reviewing this legislation, our major concerns are that, one, adequate funding be available to accomplish funding levels set forth in the bill and, two, that such funds actually find their way to support the compensation and assistance programs, particularly at the State and local level.

My written testimony at pages 10 and 11 provides a detailed analysis of this particular bill.

In a recently concluded study by APT Associates for the National Institute of Justice, it is stated that the President's task force—I might add this is on the last page of the report—it is stated that the President's Task Force on Crime Victims recommends that a fund be created to assist compensation programs. However, no State program under the plan could receive more than 10 percent of its awards for the previous year. Any money not disposed of would shift to the Federal victim witness assistance fund.

We oppose this particular formula as being insufficient to assist the State compensation programs. We feel that under your proposal in S. 704, as well as the House version in Congressman Rodino's bill, there would be adequate funding for the programs but not, as I understand the task force recommendation, which would provide inadequate funding to State compensation programs.

I would like to close by urging the subcommittee and its members to push forward with urgency the legislative proposals for Federal assistance to State crime victim compensation programs. Since 1965, nearly every congressional session has considered but failed to enact legislation for Federal aid to State crime victim programs. Since 1980, this issue has been studied and reported on by the U.S. Attorney General's Task Force on Violent Crime, the Department of Justice, the President's Task Force on Victims of Crime, as well as several congressional committees. In 1983, the administration has indicated its support as has Congressman Rodino, Chairman Fish, and ranking minority members respectively of the House Judiciary Committee. I believe that 1983 should be the year for the Congress to enact this much needed legislation.

Thank you.

[The prepared statement of Mr. Zweibel follows:]

TESTIMONY

OF

RONALD A. ZWEIBEL
Chairman of the N.Y.S. Crime Victims Board
President of the National Association of State
Crime Victims Compensation Boards

Submitted before
the
Committee on Labor and Human Resources:
Sub-Committee on Aging
Senator Charles E. Grassley, Chairman

Washington, D.C.
June 28, 1983

INTRODUCTION

As Chairman of the New York State Crime Victims Board and President of the National Association of Crime Victims Compensation Boards, I am pleased to have this opportunity to present written testimony for the hearing entitled, "Crime and the Elderly: Does Crime Victim Compensation Work?"

In New York State, the Crime Victims Board receives over 8,000 claims annually of which 14% are from elderly persons. On a national level crime victim compensation programs have received well over 36,000 claims of which approximately 11% are elderly claims. Since the elderly comprise a significant proportion of the crime victim claims received, I would like to take this opportunity to share my perspective on the elderly as crime victims.

According to the most recent figures generated by the United States Census Bureau in 1980, the number of elderly, 65 and older, is well over 26 million, approximately 11% of the total population. With continued advances in medical technology the average American can well be assured of living longer. Estimates have been given that by the turn of the century approximately 17% of the total population will be near or over age 65.[1]

During the past years increasing attention has been placed on gaining a better understanding of the problems and needs experienced by this growing segment of the population. Since more than 60% of the nation's elderly are located in metropolitan areas with a large majority living in inner cities where victimization is high, crime is consistently targeted as a problem faced by the elderly. If the U.S. Bureau of Justice Statistics victimization rates for elderly crime victims are accurate, out of the 26 plus million elderly, approximately 182,000 will be victims of violent crime in 1983. Although seemingly shocking, when we compare the number of incidences of violent crime to theft crime, the real tragedy of elderly victimization unfolds. According to the Bureau of Justice Statistics:

- 642,000 elderly will be victims of personal thefts;
- 1.3 million elderly households will be victimized by burglary; and,
- 1.5 million elderly households will be victimized by larceny.

These statistics only paint a partial picture of the crime problem faced by our nation's elderly. To gain a fuller perspective, conditions inherent in the aging process that increase the elderly's vulnerability to criminal victimization need to be identified. Only in this manner can we hope to better understand the relationship between crime and the elderly, such that needed interventions can be created for this specific victim population. The conditions identified by many professionals in the field of gerontology include: economic, physical, environmental, social and psychological aspects.

Economic Conditions:

Almost half of the population, 65 or older, are retired and live on fixed or low incomes at or below the poverty line. To have money stolen or needed repairs done on damaged property can have more far reaching implications than a purely economic evaluation would reveal.

Physical Conditions:

Diminished physical strength and stamina are experienced by all persons going through the aging process. Also, with advanced age comes a greater possibility of physical frailty and disability which makes the elderly, as a group, more vulnerable to attack.

Environmental Conditions:

Since the majority of the elderly population live in metropolitan areas in neighborhoods considered high crime areas, their susceptibility to attack is heightened. Thus, many urban elderly find themselves in situations where the next door neighbor could be the next elderly victimizer. Also, many elderly in urban areas find walking or mass transit as their only means of transportation which puts them on the street as easy prey. The issue dates of benefit checks are widely known in urban areas; thus, the elderly are more likely to be victimized repeatedly and frequently by the same offender.

Social Conditions:

More often than not the elderly live lives that are socially isolated. Whether this isolation is self-imposed or not the fact remains that this very condition makes the elderly highly vulnerable targets for victimization.

Psychological Factors:

The fear of crime in-and-of-itself keeps many elderly residing in urban areas virtual prisoners in their own homes. This fear of violence can lead the elderly to accept unwarranted limits on their freedom to the extent that their lives are continually impoverished and their freedom becomes non-existent.

It appears that the crime problem experienced by the elderly has two distinct aspects:

1) the actual incidence of being victimized; and,
2) the dysfunctioanl fear of being victimized.

The questions that must be raised at this juncture are:

- are existing victim service providers assisting the elderly in overcoming the actual consequences of victimization?
- are existing victim service providers assisting the elderly in coping with and overcoming the fear of victimization?
- What types of victim service programmatic changes or modifications are needed on a State level to ensure that currently unmet needs experienced by the elderly victim are fulfilled?

- What can the Federal Government do to assist the states in achieving their victim service goals to better serve the elderly victim?

The short answer to these important questions is that crime victim service programs are providing valuable assistance to thousands of elderly crime victims, but due to legal restrictions, inadequate funding, and general lack of public awareness, are reaching only a small fraction of the nation's elderly victims of crime. While it is often stated that crime is primarily a local and state problem, it is also true that crime is a national problem. The Federal Government must do its share. Unfortunately, legislation that provides even a modest level of federal funding assistance for state victim compensation programs has in the past repeatedly failed to be enacted by Congress.

However, in light of the 1982 President's Task Force on Victims of Crime Report supporting Federal financial assistance to State crime victim compensation programs, the support of the Federal Administration and legislative interest shown in both the Senate and the House, we look forward to positive legislative action by the Congress in 1983 to assist elderly and non-elderly victims of crime.

In order to answer the above questions in detail, it is necessary to examine the two distinct types of victim service programs currently operating in the nation:

- monetary compensation programs; and,
- victim/witness assistance programs.

Compensation Programs

Eligibility: To date, there are 39 crime victim compensation programs in the United States including the District of Columbia and the Virgin Islands.[2] There are some basic similarities in determining a victim's eligibility, compensable crimes, and compensable losses in all programs. In general, a victim is determined eligible if:

- a physical injury is sustained;
- cooperation with the police is evidenced;
- he/she is a dependent of a deceased victim; and
- the claim form is filed within appropriate time frame.

In addition to these rather general provisions, approximately one-third of the compensation programs require some type of "financial means test" to further determine eligibility. A majority of state compensation programs also require that the victim be a resident of that state.

Compensable Crimes: Most generally, compensable crimes include all violent crime; murder, rape, robbery, and assault, where the victim was the innocent victim of a crime. A little over one-half (54%)[3] of all the programs require that the crime not be perpetrated by another family member. Also, at this time, the majority of compensation programs do not recognize motor vehicle crimes giving rise to injuries of innocent parties unless such vehicle is used with intent to inflict bodily harm.

Compensable Losses: The majority of the compensation programs will make awards for: medical expenses, the loss of earnings or support, psychological counseling, occupational rehabilitation, and funeral expenses.[4] These awards are made by reducing the amount of any applicable collateral benefits including life, health and dental insurance, disability benefits, social security benefits, etc. Some programs require that a victim sustain a minimum loss. In very few programs can the loss of property or pain and suffering be considered as a compensable loss.

In 1983, out of the 180,000 elderly, violent crime victims, 98,280 or 54%[8] will sustain a physical injury. Looking at the average award rate of 61%[6] for all compensation programs and applying that figure to the 98,280 physically injured elderly crime victims, approximately 60,000 could receive an award for compensable losses. When this figure is compared to the nearly 4,000 elderly victims expected to receive compensation, the realization must be made that a large elderly crime victim population is not receiving needed assistance from the present scope of compensation available.

Special Provisions: While crime victim compensation programs do not, as a rule delineate between elderly and non-elderly victims, there are programs that have taken steps to institute a few special provisions which are of benefit to the elderly. These provisions include:

- elimination of the minimum loss requirement as done by the States of New Jersey, Pennsylvania;
- awards for home care and other replacement services as done by Connecticut, Florida, Kansas, Minnesota, North Dakota, Ohio, Oklahoma, Virginia, Wisconsin;
- awards for the repair or replacement of essential personal property as done by Connecticut, Delaware, Maryland, New York, Ohio;
- utilizing claims investigators or implementing special senior victim units who are more sensitive to the problems experienced by the elderly crime victim as done in the states of Illinois, New Jersey, New York ;and,
- referral and linkage to other victim assistance services as done by the great majority of Compensation Programs.[5,6]

Needed Improvements: In light of the special conditions of the elderly which aggravate the consequences of the victimizations, compensation programs need to take a variety of measures to better serve this victim population. Ideally, compensation programs need to consider doing the following:

- eliminate the financial means test and/or minimum loss requirement;
- establish information and referrel to other aging services provided by other programs
- implement and/or expand awards for essential personal property;
- heighten outreach efforts to the isolated elderly victims;
- create or establish special claims investigation units to deal specifically with elderly crime victim claims;

- establish or heighten links with other victim assistance service programs.

Victim Assistance Programs: In an effort to serve the needs of the whole victim, elderly or not, victim assistance programs evolved to fill the gap left by compensation programs. While the 39 compensation programs provide assistance for the victim's economic hardships on a state level, over 400 local victim assistance[7] programs throughout the country have the ability to meet the other complex problems experienced by crime victims. Many programs do not distinguish between the elderly and non-elderly while others are specifically geared toward assisting the elderly victim. Whatever the case may be a wide array of services are offered to serve the needs of the elderly. These services may include the provision of:

- emergency shelter, food, money and/or security repair;
- 24 hour hotline;
- crisis intervention;
- outreach;
- advocacy and referral;
- follow-up counseling;
- transportation and escort services;
- assistance with insurance claims, restitution payments, and victim compensation;
- assistance with the legal process including a procedural orientation, notification of case schedule and disposition, preparation for testimony, the securing of legal counsel;
- victim/witness waiting areas; and,
- victim/witness protection, as needed.

These services in conjunction with crime victim compensation seek to make the victim whole once again. Thus, the relationship between victim assistance programs and compensation programs can be crucial.

Out of all the victims served by victim assistance programs 24%[7] are elderly. When this figure is compared to the 11% elderly victim population served by compensation programs, one can safely assume that victim assistance programs certainly complement the limited assistance available from compensation programs. The fact still remains that aside from the services being provided to some victims, a large majority are not being served due to many programmatic constraints.

The Federal Government's Role:

Analysis of S.704, Crime Victims Assistance Fund, introduced by Senators Heinz and Grassley. I would like to commend both Senators Grassley and Heinz, for their support of Federal assistance to state compensation programs and their 1983 legislative initiative.

In reviewing this legislation, our major concerns are that (1) adequate funding be available to actually accomplish funding levels set forth in the legislation, and (2) that funds actually be used to support victim compensation and assistance programs, particularly at the state and local level.

Various revenue estimates have been given for this legislation, but the total annual revenue for the Fund will need to be at least $30 million in order to meet the legislation's stated goal of providing 25% funding assistance to state crime victim compensation programs. Should actual revenues collected prove to be less than $30 million per year, we believe the legislation should give priority to state victim compensation programs. Compensation programs are not only the oldest victim service programs in the nation, but are the "front line" programs that provide direct, tangible relief for the hardships suffered by the nation's elderly crime victims.

Should revenues be inadequate to fund existing victim compensation and assistance programs at the 25% level, the distribution of these very limited funds to train law enforcement officials, provide technical assistance to the states, or establish new Federal witness programs or a victim's advocate in the Department of Justice should, in our view, be given secondary priority.

Moreover, the bill as presently drafted does not authorize or require the distribution of any funding assistance to local or state victim assistance programs, even if adequate revenues are received by the fund. At the very least, any legislation enacted by Congress should guarantee that a major portion of funds collected for the purpose of aiding victim and witness assistance programs, should be distributed to the state and local programs through the appropriate state agencies. It is these programs that bear the burden of assisting the vast majority of the nation's crime victims.

As chief administrator of one of the nation's largest crime victims program and President of the National Association of State Crime Victim Compensation Boards, I can testify that the basic need for federal legislation to provide funding assistance to elderly and non-elderly victim programs has never been greater.

In late 1982 and early 1983, the New York program, which has traditionally received adequate state funding, ran out of funds for compensation awards eight months into the 1982-83 fiscal year. Payments to victims were therefore delayed up to five months. This inadequate funding situation for New York and most other state programs is expected to continue and perhaps grow worse in 1984. The cost of medical services to victims is continuing to soar, the crime rate remains at historic high levels, and applications for assistance are ever-increasing. Federal assistance, for some state programs, may be necessary just to maintain the existing level of services.

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Senator Grassley. Thank you very much.

John, will you proceed? Mr. Schaffner.

Mr. Schaffner. Mr. Chairman, my name is John Schaffner. For the last 11 years, I have served as the legislative liaison officer for the Iowa Department of Public Safety, which is a statewide law enforcement agency. I am also the administrator of Iowa's new crime victim reparation program, which became operational on January 1 of 1983.

As a result of these dual roles, I have had the unique opportunity of shepherding our victim reparation bill through the Iowa legislative process, a process which I am sure the chairman is very familiar with. I also had the opportunity to implement the new legislation once it was enacted. I am pleased to be here today to share a few remarks and concerns with you.

I might begin by saying that crime victims have repeatedly voiced concern over minimum law requirements enacted by legislatures to contain costs. In practice, this exclusion places the elderly and low income victims in a distinct disadvantage. A threshold of $100 or $250 represents to them substantial losses that they cannot absorb.

Victim compensation programs differ generally in residence requirements. Some States will only compensate residents that are victimized within their borders. Others will compensate their residents regardless of where they are victimized, but will not compensate nonresidents who are victimized within the State. States that attract large numbers of tourists have been hesitant about offering coverage to nonresidents for fear of depleting their compensation funds.

At least 15 States have entered into reciprocal agreements. Although this policy is a first step toward a more equitable approach, it is limited. To address this problem fully, States should agree either to compensate all eligible individuals victimized within the State regardless of their residency or to compensate their own residents wherever they are victimized. I recommend that no Federal assistance be given to those State compensation programs that have restrictions limiting payments to only residents of their respective States.

An example is found in our own Iowa experience. Our law provides that a person who is victimized in Iowa, regardless of the residency, can be compensated. We had an Iowa resident that journeyed to Florida and was victimized in Florida. Florida will not pay because they were not a resident of that jurisdiction. We believe that that is an inappropriate bar by certain States. So I would advocate that Federal funding be made available to those States who in fact do not consider residency as a test.

Our Iowa law does not have a minimum threshold payment to receive a claim payment. We process all claims but do not have the minimum threshold. I think that was a question that was raised earlier.

Senator GRASSLEY. Backing up one step, you just made the point that we ought to have a requirement in the Federal law that residency could not be a requirement by the individual States.

Mr. SCHAFFNER. If they in fact are receiving Federal funding for the program. The Iowa law is also based upon the same concept that your proposal deals with. Ours is based upon a surtax on all criminal files, whether that be a traffic fine, or a fine for a major felony offense. We implemented the compensation program without increasing any type of taxes; merely a surtax on criminal fines. The Iowa fund has generated about $1.2 million annually. About 200,000 of that money was appropriated by the general assembly specifically for crime reparation. There are also other programs funded by the surtax fines. We are one of the recipients. It is not a trust fund operation.

The propriety Federal funding revolves around two issues. First, the propriety of the Federal involvement, and of course second, the cost to the Federal Government. I believe there are at least two sound reasons for Federal participation in State victim compensation programs. First, most State programs currently compensate Federal victims of crime. However, because of financial problems, many States may be unwilling or unable to continue to do so in the future. If State programs stop helping victims of Federal crime and no Federal efforts are made, then either there would be no help available for such victims or victims of crime over which the Federal and State governments share jurisdictions, would find their eligibility, dependent upon some bureaucratic decision as to which jurisdiction will, in fact, provide compensation. These decisions are based on considerations that oftentimes have nothing whatsoever to do with the immediate needs of the victim. But the Federal Government could, of course, commit itself to aiding victims of Federal crimes. If this course is chosen, probably a new bureaucracy covering 50 States would have to be created. The startup and continued administrative costs of such a program would be substantial. A duplication of State and Federal effort would not only be inefficient but would be confusing to victims that we all seek to serve. The most unfortunate result of this would be large sums of money which could be expended would be expended on unnecessary administrative costs rather than mede available to those victims who are in need of assistance.

The point I am making is that I think the States have programs in place today and could administer to the Federal victims through the existing State programs with 100 percent reimbursement for those Federal crimes which the States are asked to provide compensation for.

I would hate to see another layer of bureaucracy created simply to administer Federal funds to Federal crime victims. I think we could piggyback on existing State programs that are now in place.

Second, the Federal Government has a history of making sums of money available to State programs for criminal justice purposes, such as funding for the law enforcement agencies through the former Law Enforcement Assistance Administration, and the Federal Government has also made money available to the States for education and rehabilitation of State prisoners who have committed State crimes. If the Federal Government will step in to assist State prisoners, it seems only just that the same Federal Government might also step in to help citizens that were victimized by those Federal crimes.

I recommend that the Federal victim compensation funding moneys be distributed to the States according to the following guidelines. I believe that the 25 percent proposal that was advocated by the ABA is probably a little bit more generous than the current language of the bill, and I hope that there is some consideration by the subcommittee of increasing it perhaps from 10 percent to 25 percent as has been advocated by the ABA.

Money from the Federal crime compensation fund could be administered to the States as follows. The States would in fact report the total amount of compensation awarded the previous year, and these figures would be totaled to get the total compensation to be awarded nationally. Each State's award would be figured in terms of its percentage on a national total. Each State would be awarded that percentage on the compensation fund for the ensuing year with limitations that it could not receive more than 25 percent of its total award for the previous year.

Speaking now about the elderly specifically. In the past two decades, a great deal of concern has been focused on the needs of the elderly. Many people believe that elderly Americans are especially vulnerable to crime. They are preferred targets of crime, yet data gathered by the National Crime Survey over the past 8 years show that younger persons under the age of 65 make up a disproportionately large share of the Nation's victims. The rates of crime against the elderly are comparatively low statistically speaking. However, I would like to share with you a few thoughts that the statistics did not put in real human terms.

One of the great fears of an older person is a fall. Older bones are brittle and break more easily than younger bones. A leg or hip that is broken during a mugging or a purse snatching can result in immobility and dependency for long and prolonged periods of time. Such injuries can even result in the permanent confinement to a wheelchair or nursing home. Thus relatively minor physical injuries weigh oftentimes much more heavily on our older victims of crime.

On the whole, our older persons also have a diminished income or are oftentimes on fixed incomes and have fewer economic resources than our younger Americans. Dependents on pensions or social security payments commonly make old age a time of economic insecurity. The limited resources of the elderly are used for necessities. This factor explains how even a small loss would often result very heavily on a senior citizen. Criminals also, as we know, attack the weak. The reduced physical capabilities of older persons often act as incentives for victimization. In addition, due to the economic factors and patterns of neighborhood transitions, the elderly are likely to live in close proximity to high crime areas. The elderly are also more dependent on walking and public transportation which oftentimes increases their exposure to criminal activity.

We talked earlier today about the fear of crime which is particularly pervasive amongst our senior citizens.

I would like to close my remarks today by talking a bit more in detail with regard to the Iowa statute. The question was raised earlier are there States that do have a good samaritan provision. I am pleased to report the Iowa statute does have a good samaritan provision. The Iowa statute also requires that we publicize the existence of our victim reparation program. There is a legislative mandate that we publicize its existence. We also have statutory language that law enforcement officers, social workers, and victim assistance programs shall publicize the existence of the program, and I think you are particularly on point, Senator, when you said that law enforcement is the first line of contact with crime victims. We have prepared for our Iowa law enforcement officers a little card that they carry in their briefcases. They tear that card off and give it to the crime victim and the information is there for the victim to begin pursuing compensation. So I think that is particularly important.

The bill that you have worked on with Senator Heinz talk in terms of making training available for law enforcement officers. I think there is a language in the bill that states that some funding will be available for training of law enforcement officers. I would suggest that maybe that language should be more specific and say that the training should focus upon sensitivity training of those officers toward the needs of crime victims. The language may be a little bit too broad the way it is drafted today. Training of law enforcement officers could be interrupted to mean that we would train them for accident investigations or we could train them in firearms usage. That type of training might be a little bit afield from perhaps what we are trying to focus on in crime victim assistance.

Our program in Iowa is a bit more conservative than some States. Our maximum payment is $2,000 per victim. Some States, it is $15,000 or $20,000. But we think this is a foot in the door. We are concerned about future funding of our program. We have a sunset clause in our legislation that sunsets this law next July. I am sure our appropriations people will be looking very carefully at that and if there is some possibility of getting some supplementary Federal funds, that would certainly enhance the continuation of our program.

So, with that, Senator, I would defer to any questions that you might have at this point in time.

[The prepared statement of Mr. Schaffner follows:]

STATEMENT

OF

JOHN T. SCHAFFNER
LEGISLATIVE LIAISON OFFICER
IOWA DEPARTMENT OF PUBLIC SAFETY

Mr. Chairman and members of the Senate Subcommittee on Aging, my name is John T. Schaffner. For the last eleven years, I have served as the Legislative Liaison Officer for the Iowa Department of Public Safety (a statewide law enforcement agency). I am also the administrator of Iowa's new Crime Victim Reparation Program, which became operational on January 1, 1983.

As the result of these dual roles, I have had the unique opportunity of shepherding our Victim Reparation Bill through the Iowa Legislative process and following the enactment of this new legislation, I was assigned the responsibilities to administer the implementation of our new reparation statute.

I am extremely pleased to have the opportunity to testify before your subcommittee today.

Daily, we are exposed to a plethora of media reports about cases of violent crime such as murder, rape, robbery or aggrevated assault. These news accounts reflect the fact that nationally, during the last fifteen years, we have experienced a rapidly accelerating upsurge in violent crimes. As is so often the case, attention is directed to the perpetrator of the crime and to the criminal justice system. But what about the victim? What of his or her injury, suffering, humiliation and financial losses? It has been said that the victim is twice victimized: once by the criminal and once by the criminal justice system. The victim is generally left helpless, often destitute and almost always unattended.

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I believe there is a growing awareness among many today, that the victims of violent crime have too long been the "forgotten persons" within our society and within our criminal justice system. There is much justification for this concern. Not only do the victims of crime suffer directly from the criminal act with all its psychological, physical and economical ramifications, but victims are also often subject to the additional trama during the criminal justice process.

Traditionally, our people look to our criminal justice system to provide a sense of security from those who break the law. It was a belief in this fundamental rule of law, upon which our country was founded. The court is our sanctuary.

Victims control their impulse to seek revenge against offenders in return for the government's promise to protect them. Moreover, victims pay taxes to the government for this protection. Since the government forbids victims to take the law into their own hands, it seems fair that when government fails to protect them, the victims should receive at least the same attention government now grants to criminals.

I believe, however, there is cause for optimism. Since 1965, thirty-eight states and the District of Columbia have enacted crime victim compensation legislation. Victim compensation is an unusual program in terms of its ability to generate political support. In a sense, it is difficult to find opponents of victim compensation. The major focus of opposition to compensation programs generally does not rest with the program philosophy, provisions or target clients, but in concerns over its potential costs. Payments are made from state administered funds upon application by eligible claimants.

Payment does not depend upon the arrest and conviction of the offender and there is no need for the claimant to secure a civil judgment.

Support for the idea of victim compensation may have been generated by the general public's increasing awareness of the growing crime rate and the changing perception of the likelihood of becoming a crime victim. As the public perceived the chance of victimization to be higher, support for a program which would offset some of the negative consequences of victimization would be more likely to grow.

One aspect of victim compensation, which brings both public and law enforcement support for the concept, is the almost universal provision that victims must cooperate with law enforcement officials to be able to be eligible for victim compensation. In this resepct, victim compensation has the potential to assist not only the innocent victim, but the system designed to bring the offender to justice by encouraging reporting of the criminal incident and willing participation in the criminal justice process.

Coverage generally extends to both victims and dependents of victims and the laws generally define both terms broadly. Most of the statutes condition eligibility on the victims having reported the crime to the police and cooperating with the police during the investigation and prosecution of the criminal act which precipitated the claim.

Compensation generally is provided for unreimbursed medical expenses, funeral expenses and loss of earnings. Property losses generally are not reimbursed. Several states provide compensation for such additional expenses as psychiatric services or psychological counseling. Most of the laws set a ceiling on the amount of recovery by individual claimants. In a few states, up to $50,000, but more commonly in the range of $10,000 to $15,000.

Most of the victim compensation programs are financed from general revenue funds, although some are financed and hold in part from offender assessments, such as a surtax on criminal fines.

The philosophical basis for compensation programs varies from a legal "tort" theory whereby the state is seen to have failed to protect its citizens adequately, to an humanitarian rationale for which all citizens should receive assistance for the compelling needs, to yet another theory that recognizes victim satisfaction as a benefit to the criminal justice system. In reality, most programs represent a mixture of these rationales.

I believe that financial compensation for losses that victims sustain as a result of a violent crime, must be an integral part of both federal and state governments response to assisting those innocent citizens. No amount of money can erase the tragedy and trama imposed upon them, however, some financial assistance can be important first steps in helping crime victims begin the often lengthy process of recovery.

The financial impact of crime can be severe. There is a tendency to believe that insurance will cover most costs and losses. While some victims have adequate coverage, many others do not. The poor and the elderly often have no insurance. Even those victims who have coverage discover that recovery is made difficult or impossible by high deductible clauses, or that their policy is limited or has precluded payments for such expenses as loss wages and psychological counseling.

Several state compensation programs now share a common concern, the maintenance of adequate funding. Victim claims may have to wait months until sufficient fines have been collected or until a new fiscal year begins and the budgetary fund is replenished. Creditors are seldom patient. While waiting for funding that will eventually come, victims can be sued civilly, harassed continually or forced to watch their credit rating vanish. Not only is compensation important, its payment must also be timely to save victims further inconvenience, embarrassment and substantial long term financial hardships. The funding constraints also discourage programs from eliminating or raising the maximal allowable award.

Crime victims have repeatedly voiced concern over minimum laws requirements enacted by legislators to contain costs. In practice, this exclusion places the elderly and low income victims in a distinct disadvantage; a threshold of $100 or $250 represents to them a substantial loss they cannot absorb. Victim compensation programs differ generally in their residency requirements. Some states will only compensate residents that are victimized within their boundaries. Others will compensate their residents regardless of where they are victimized, but will not compensate non-residents who are victimized within the state. States that attract large numbers of tourists have been hesitant about offering coverage to non-residents for fear of depleting the compensation fund.

At least fifteen states have entered into the reciprocal agreements. Although this policy is a first step toward an inequitable approach, it is limited. To address the problem fully, states should agree either to compensate all eligible individuals victimized within the state, regardless of the residency or to compensate their own residents wherever they are victimized. I recommend that no federal assistance be given to state compensation programs that have a restriction limiting payment to only residents of their respective states.

The propriety of federal funding for victim compensation programs, revolves around two issues: 1) The propriety of the federal involvement and, 2) costs. There are at least two sound reasons for federal participation in victim compensation. First, most state programs currently compensate federal crime victims. However, because of financial problems, many states may be unwilling or unable to continue to do so in the future. If state programs stop helping victims of federal crime and no federal efforts are made, then either there would be no help available for such victims or victims of crime over which federal and state governments share jurisdiction would find that their eligibility for assistance depends upon a bureaucratic decision as to which jurisdiction will provide compensation. These decisions are based on considerations that have nothing whatsoever to do with the immediate needs of the victim.

The federal government could, of course, commit itself to aiding victims of federal crimes. If this course is chosen, the new bureaucracy covering fifty states would have to be created. The start-up and continued administrative costs would be substantial. A duplication of state and federal effort would not only be inefficient but would be confusing to victims we seek to serve. The most unfortunate result of this would be large sums of money would be expended unnecessarily on administrative costs rather than made available to those victims who need assistance. Secondly, the federal government has a history of making substantial sums of money available to the states for criminal justice purposes, such as funding for law enforcement agencies through the former Law Enforcement Assistance Administration and the federal government has also made money available to the states for the education and rehabilitation of state prisoners who have committed state crimes. If the federal government will step in to assist state prisoners, it seems only just that the same federal government not shrink from aiding the innocent citizens victimized by those very prisoners the government is now assisting.

I recommend that federal victim compensation fund monies which may be disbursed to existing state compensation programs meet the following guidelines. The decision should be made to give money to only existing programs, rather than to provide seed money for new programs. (Programs already in existence are currently giving service and needed financial help, they are currently meeting the needs of victims and should not be disadvantaged. Further, requiring that state government assume the initial costs of starting the program and the primary responsibility for continued funding, assures the existence of a genuine State commitment rather than the initiation of a proposal simply to put a claim in for the available federal funds.) No state program should be eligible for a portion of the compensation fund, unless it provides compensation for anyone victimized in its borders, regardless of the victim's state of residency, provides compensation regardless of whether the crime violates state or federal law and provides compensation for psychological counseling required as a result of victimization.

Money from the federal compensation fund could be awarded among the states as follows: All states would report the total amount of compensation awarded the previous year and those figures would be totalled to give the total compensation awarded nationally. Each state's award would be figured in terms of its percentage on a national total. Each state would be awarded that percentage of compensation fund for the ensuing year with limitations that it could not receive more than twenty-five percent of its total award for the previous year. The twenty-five percent limitation will guard against depletion of the compensation fund and against larger states drawing off too large of segment of the fund. I further recommend that states be reimbursed one hundred percent for payments made for federal crimes. I believe that either direct federal funding or earmarking a portion of the federal block grant is an appropriate vehicle for transmitting the federal dollars to the state treasuries.

The elderly, as you know, are a sizable segment of our population. the 1980 census data indicate that 11.3 percent or more than 25 million Americans are sixty-five years of age or older. Eleven percent may not seem like a very large segment until put in its historical perspective. In 1900, only four percent of the nation's people were sixty-five or older; in 1950, the figure was eight percent. In short, the elderly proportion of our population has been and is increasing rapidly. One estimate projects that by the year 2000, the elderly will constitute twenty percent of the population in certain areas of this country.

In the past two decades, political attention and public concern have been focused as never before on problems of the elderly.

Many people believe that elderly Americans are especially vulnerable to crime. That they are preferred targets of criminals. Yet, data gathered by the National Crime Survey over the past eight years, shows that younger persons under the age of sixty-five make up a disproportionally large share of the nation's victims. The rates of crime against the elderly are comparatively low statistically speaking. However, I would like to share with you a few thoughts that "the statistics" do not put in human terms.

I would like to share with you the following observations. One of the great fears of older persons is a fall. Older bones are more brittle and break more easily than younger bones. A leg or hip that is broken during a mugging or purse snatching can result in immobility and dependency for prolonged periods of time. Such injuries can even result in permanent confinement to a wheel chair and nursing home. Thus, relatively minor physical injuries weigh more heavily on the older victim of crime.

On the whole, older persons have diminished and fixed incomes and fewer economic resources than younger persons. Dependence on pensions or social security payments commonly make old age a time of economic insecurity. The limited resources of the elderly are used for necessities. This factor explains how even a small loss will often result in a very real financial burden.

Criminals are attracted to the weak. The reduced physical capabilities of older persons can act as incentives for victimization. In addition, due to the economic factors and patterns of neighborhood transitions, the elderly are likely to live or in close proximity to high crime areas. The elderly are also more dependent on walking and on public transportation, which also increases the exposure to potential criminals.

Fear of crime is particularly pervasive among older persons. Fear is produced not only from the actual threat of crime but also from the perceived threat. Too often the response of older persons to fear is withdrawal from community life in order to remain securely behind locked doors. The result is loss of personal freedom and assault on the quality of life of the older person.

Also, older persons often times fail to report being a victim of crime because they are fearful of reprisals that might occur if they are called to testify against an offender.

Finally, crime is a problem that touches all America. There is scarsely a citizen who does not find his or her life touched by crime or the fear of crime. Especially vulnerable are the elderly, who all too frequently represent an easy mark for the criminal. Many senior citizens are prisoners in their own homes because they are afraid to venture outdoors. Experts in the field of crime and elderly have made a strong case for signaling out this type of crime for special attention. They point out that 1) older persons are not as strong and generally are less able to resist the attackers and defend themselves. 2) Older people are more likely to live alone and are generally more isolated. 3) There is a greater likelihood that the older person will live in a high crime neighborhood, which increases the chance of their being repeatedly victimized. The days when pension checks, social security payments and other income are received are generally well known by the criminal element. The criminal readily recognizes that circumstances minimize the risks normally associated with crime. It is time that our criminal justice system also recognizes this. I believe that crimes against the elderly warrant special consideration.

Every twenty-three minutes, one of us is murdered. Every six minutes, a woman is raped. Millions of dollars have been spent trying to understand and reform the criminal. Yet, often little or nothing has been done to assist an innocent victim. When an elderly person is robbed or knocked to the ground, breaking a hip, their lives can be changed forever. In a moment of terror, our citizens suffer injuries, which may last a lifetime, sustained physical scars that may mar them forever, become incapacitated and unable to work or in most tragic cases, leave behind a family to mourn, pay funeral expenses and wait years to see the killer tried and brought to justice.

I thank you for allowing me to share my views with you today.

Iowa

CHAPTER 912

CRIME VICTIM REPARATION PROGRAM

Reparation only to victims of criminal acts committed on or after January 1, 1983; 82 Acts, ch 1258, §25

912.1 Definitions.
912.2 Award of reparation.
912.3 Duties of commissioner.
912.4 Application for reparation.
912.5 Reparations payable.
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912.7 Reductions and disqualifications.
912.8 Reparation when money insufficient.
912.9 Erroneous or fraudulent payment—penalty.
912.10 Release of information.
912.11 Emergency payment reparation.
912.12 Right of action against perpetrator—subrogation.
912.13 Sunset clause.

912.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of public safety.

2. *"Commissioner"* means the commissioner of the department or the commissioner's designee.

3. *"Victim"* means a person who suffers personal injury or death as a result of any of the following:

a. A crime.

b. The good faith effort of a person attempting to prevent a crime.

c. The good faith effort of a person to apprehend a person suspected of committing a crime.

4. *"Crime"* means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except when the intention is to cause personal injury or death.

5. *"Dependent"* means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.

6. *"Reparation"* means compensation awarded by the commissioner as authorized by this chapter. [82 Acts, ch 1258, §5, 17]

912.2 Award of reparation. The commissioner shall award reparations authorized by this chapter if the commissioner is satisfied that the requirements for reparation have been met. [82 Acts, ch 1258, §6, 17]

912.3 Duties of commissioner. The commissioner shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim reparation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim reparation program, including the procedures for obtaining reparation under the program.

4. Request from the department of social services, the Iowa department of job service, the industrial commissioner, the attorney general, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim reparation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if reparation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim reparation program if reparation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Render to the governor and the general assembly by January 1, 1984, a written report of activities undertaken for the crime victim reparation program. [82 Acts, ch 1258, §7, 17]

912.4 Application for reparation.

1. To claim a reparation under the crime victim reparation program, a person shall apply in writing on a form prescribed by the commissioner and file the application with the commissioner within one hundred eighty days after the date of the crime or within one hundred twenty days after the date of death of the victim.

2. A person is not eligible for reparation unless the crime was reported to the local police department or county sheriff department within twenty-four hours of its occurrence. However, if the crime cannot reasonably be reported within that time period, the crime shall have been reported within twenty-four hours of

the time a report can reasonably be made. [82 Acts, ch 1258, §8, 17]

912.5 Reparations payable. The commissioner may order the payment of reparation:

1. To or for the benefit of the person filing the claim.

2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.

3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to a reparation, the reparation may be apportioned by the commissioner as the commissioner determines to be fair and equitable among the dependents. [82 Acts, ch 1258, §9, 17]

912.6 Computation of reparation. The commissioner shall make reparation as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim, not to exceed two thousand dollars per victim unless otherwise specified:

1. Reasonable charges incurred for medical care.

2. Loss of income from work the victim would have performed and received compensation for if the victim had not been injured.

3. Reasonable replacement value of clothing that is held for evidentiary purposes, but not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed one thousand dollars. [82 Acts, ch 1258, §10, 17]

912.7 Reductions and disqualifications. Reparations are subject to reduction and disqualification as follows:

1. A reparation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

a. From or on behalf of, the person who committed the crime.

b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.

c. From public funds.

d. As an emergency award under section 912.11.

2. A reparation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:

a. Consent, provocation, or incitement by the victim.

b. An act committed by a person living in the same household with the victim, unless a criminal conviction for the act is obtained.

c. An act committed by a person who is, at the time of the criminal act, the spouse, child, stepchild, parent, stepparent, brother, stepbrother, sister, or stepsister of the victim, or the parent or stepparent of the victim's spouse, or a brother, stepbrother, sister, or stepsister of the victim's spouse, unless a criminal conviction for the act is obtained.

d. The victim assisting, attempting, or committing a criminal act.

3. A person is disqualified from receiving a reparation if the victim has not cooperated with an appropriate law enforcement agency in the investigation or prosecution of the crime relating to the claim, or has not cooperated with the department in the administration of the crime victim reparation program. [82 Acts, ch 1258, §11, 17]

Referred to in §912.12

912.8 Reparation when money insufficient. Notwithstanding this chapter a victim otherwise qualified for a reparation under the crime victim reparation program, is not entitled to the reparation when there is insufficient money from the appropriation for the program to pay the reparation. [82 Acts, ch 1258, §12, 17]

912.9 Erroneous or fraudulent payment—penalty.

1. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the reparation. The commissioner may waive, decrease, or adjust the amount of the repayment of the reparation. However, if the commissioner does not notify the recipient of the erroneous payment or overpayment within one year of the date the reparation was made, the recipient is not liable for the repayment of the reparation.

2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the reparation. [82 Acts, ch 1258, §13, 17]

912.10 Release of information. A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for a reparation shall allow the inspection and reproduction of the information by the commissioner upon the request of the commissioner, to be used only in the administration and enforcement of the crime victim reparation program. Information and records which are confidential under section 68A.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the commissioner as required under this section. [82 Acts, ch 1258, §14, 17]

912.11 Emergency payment reparation. If the commissioner determines that reparation may be made and that undue hardship may result to the person if partial immediate payment is not made, the commissioner may order an emergency reparation to be made to the person, not to exceed five hundred dollars. [82 Acts, ch 1258, §15, 17]

Referred to in §912.7

912.12 Right of action against perpetrator—subrogation. A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving reparation under the crime victim reparation program. If a person receiving reparation under the program seeks indemnification which would reduce the reparation under section 912.7, subsection 1, the commissioner is subrogated to the recovery to the extent of payments by the commissioner to or on behalf of the person. The commissioner has a right of legal action against a person who has committed a crime resulting in payment of reparation by the department to the extent of the reparation payment. However, legal action by the commissioner does not affect the right of a person to seek further relief in other legal actions. [82 Acts, ch 1256, §16, 17]

912.13 Sunset clause. This chapter is repealed effective July 1, 1984. [82 Acts, ch 1256, §17]

Senator **Grassley**. I ought to break from the normal process and recognize my colleague, Senator Hawkins from the great State of Florida, second to Iowa. But we have probably more Iowans there, I believe, outside of Iowa than anywhere else in the United States. Particularly in the winter.

I would like to ask you for your participation now. We still have one more panel after this. Would you proceed?

Senator **Hawkins**. Yes. I apologize for being late. I am very interested in the subject and I compliment the chairman for his continued interest, and know of your successful efforts last session to enact the Omnibus Victims' Protection Act of 1982, and really encourage you to continue in this direction.

Florida does have a high proportion of our citizens who are elderly and a great number come from Iowa. I think the very select people do select Florida. The subject of today's hearing is of deep concern to us in Florida. We had great assistance from the President and the Task Force on Crime and Drugs in south Florida, and it has focused the attention of the United States on the entry point at least of a lot of our troubles, and victims' compensation is very important to everyone. Too long we have considered the rights of the criminals and not the rights of the victims, and it is time that we turned that around.

I have a statement that I will enter into the record, but commend you for holding this hearing.

Senator **Grassley**. Well, your statement will be as a matter of normal procedure included in the record, and thank you for your attention.

[The prepared statement of Senator Hawkins follows:]

PREPARED STATEMENT OF SENATOR HAWKINS

Senator **Hawkins**. Mr. Chairman, it is a pleasure to join you here today to consider an issue that is vital to the elderly citizens of my State and the entire nation. I know of your successful efforts last session to enact the Omnibus Victim's Protection Act of 1982 and of your continuing interest in this issue to insure that the victims of crime are not forgotten in the legal process.

As you know, I represent a State with the largest proportion of elderly than any other State in the Nation. Therefore, I am very concerned that the victim's compensation programs are both effective and adequate, not only to compensate victims for their loss, but to combat the elderly victim's sense of alienation and anger at society and to encourage citizen participation with law enforcement agencies.

Studies have shown that the elderly have one of the highest rates of cooperation with law enforcement agencies, they, more than any other group have limited their activities and taken precautionary measures to avoid being victimized. Yet this group is still the most adversely affected by crime and the fear of crime. While their rate of victimization may not be greater than other groups, it is clear that the trauma and economic impact of crime weighs far more heavily upon the elderly individual. Indeed, the precautionary measures that they are forced to take to avoid victimization limits their activities and thus diminishes the quality of their lives.

Over 30 States have passed State legislation providing for victims compensation and enactment of last year's Omnibus Victims Protection Act as a positive step, but I believe that it is only a first step and much more needs to be done to address this problem. I feel that society has a duty to assist elderly victims of crime. I hope that today's hearings will reveal some answers to our questions regarding victims compensation.

I look forward to today's testimony as a source of information as a new insight into the risks and ramifications of a Federal compensation program.

Senator **Grassley**. I will start out the questioning and then Senator Hawkins, I will turn to you.

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I would ask both of you to feel free to comment, although I do have some questions directed specifically at one or the other.

Mr. Zweibel, is there a statute of limitations that is widely utilized by States that governs when a claim must be brought by the victim?

Mr. **Zweibel**. I believe most States do have some form of statute of limitations. In New York, we have expanded that statute of limitations and now a claim may be filed within 1 year. It used to be 90 days when the board was first formed under legislation in 1966, and I think a good many States have adopted the role model of New York at that time, although many States have whittled away or expanded that statute of limitations. I cannot give you specifics at this time. But in New York the statute of limitations is 1 year for filing with the board. However, for good cause, we can extend that to 2 years but not more than 2 years from the time of the crime.

Senator **Grassley**. New York has about 8,000 applicants or claims filed a year of which 14-percent are from the elderly. How many actually receive assistance, and is that ratio of those who actually receive assistance about the same, as that 14-percent figure is of elderly represented?

Mr. **Zweibel**. It is approximately the same. The figure is also about one-third that receive compensation in New York State. It might be a couple of percentage points higher because of the greater effort that we do put in to the elderly cases. We were given an extended mandate to have investigators work solely on the elderly cases about 2 years ago. However, since the proportion of elderly cases is approximately 14 percent and it works out at this point that there are approximately 14 percent of our investigators are designated to elderly cases, they have approximately the same caseload, and we do not have the same capacity as we did to help the elderly in a greater way than in the past.

Senator **Grassley**. I do not know exactly how that works out but we have statistics showing that of the victims served by victims' compensation programs, about 24 percent are elderly, although the elderly make up only about 11 percent of the population. We have heard testimony from the Department of Justice to the effect that the actual incidence of crime may be less with respect to the elderly. Would you have any judgment of what accounts for this proportionate funding for the elderly victims?

Mr. **Zweibel**. Well, I think that the——

Senator **Grassley**. Unless maybe you would want to dispute it though that is what the statistics indicate.

Mr. **Zweibel**. The elderly are not qualified for compensation as many others are because of the fact that they are elderly. Very often, because they are elderly, they are often retired and therefore do not suffer loss of earnings, which is one of the two basic areas that we provide compensation and likewise with medical expenses they very often have coverage such as medicare or other forms of health insurance that may very well cover all or most of their medical needs and, therefore, there are not as many benefits that are provided for the elderly as other segments of the population.

Senator **Grassley**. I wonder if you have any track record on that point from your State? John, why don't you give us a short summary of some of the services that fall under the heading of victims' assistance in Iowa?

Mr. SCHAFFNER. The areas that we provide victims' assistance under the crime reparation program, basically includes provision for medical expenses for those people that are injured as the direct result of criminal attack, and medical expenses also go to psychological counseling for those people that need that as a result of being victimized, not only physically but also mentally. We also will provide income for loss of wages, for a person that is actually out of work as a result of criminal injury, pay possible wages. We will pay up to $100 for clothing, personal clothing, that is held by the police as evidence. This is particularly common, Senator, in sexual assault cases where the law enforcement agency will retain the clothing for an extended period of time. We will pay the victim right up front up to $100 for that clothing that he or she indicates the value of that. We also will pay $1,000 for funeral and burial expenses if in fact the victim succumbs from the criminal attack. Once again, it is not a large amount of money but at least during the 1982 session when bucks were tough to find, we were pleased that the legislature enacted a beginning program.

Senator GRASSLEY. I do not know how the Iowa program would fit into this question, but regardless of the Iowa program, I am interested in your views. For instance, you know, the elderly have probably greater need for eyeglasses, hearing aids, prosthetic devices, and many times these are not covered by victims' compensation statutes.

Mr. SCHAFFNER. In the Iowa program, those provisions are covered. We have language in the law that—we have a number of claims, for example, of false teeth; as a good other example, a brace off of a bad leg; eyeglasses are oftentimes smashed, and hearing aids are destroyed. And we will pay up to the full amount for those medically prescribed devices under the Iowa program. It is the only kind of property we cover.

Mr. ZWEIBEL. I might add, Senator, that New York passed a bill this year that will allow us to compensate for essential property up to $250, and in the case of the elderly, the requirement of physical injury is waived. It does apply to all other complaints but is not required for the elderly. We, of course, have means tests and there are other obstructions to possibly receiving benefits, but we did pass an essential property bill that will be helpful primarily to the elderly.

Senator GRASSLEY. Senator Hawkins.

Senator HAWKINS. Could I ask you both does the compensation require successful resolution of the crime, prosecution of the crime?

Mr. ZWEIBEL. I do not think that there are any statistics nor has there been any kind of a serious study on this point. I think it is something that should be done. Clearly I do feel, however, that by providing compensation as well as other assistance to crime victims, it does help the criminal justice process and certainly does not encourage victims of crime to cooperate with the criminal justice system.

Senator HAWKINS. Do I see you reading from a brochure? Is that a brochure that is circulated in Iowa?

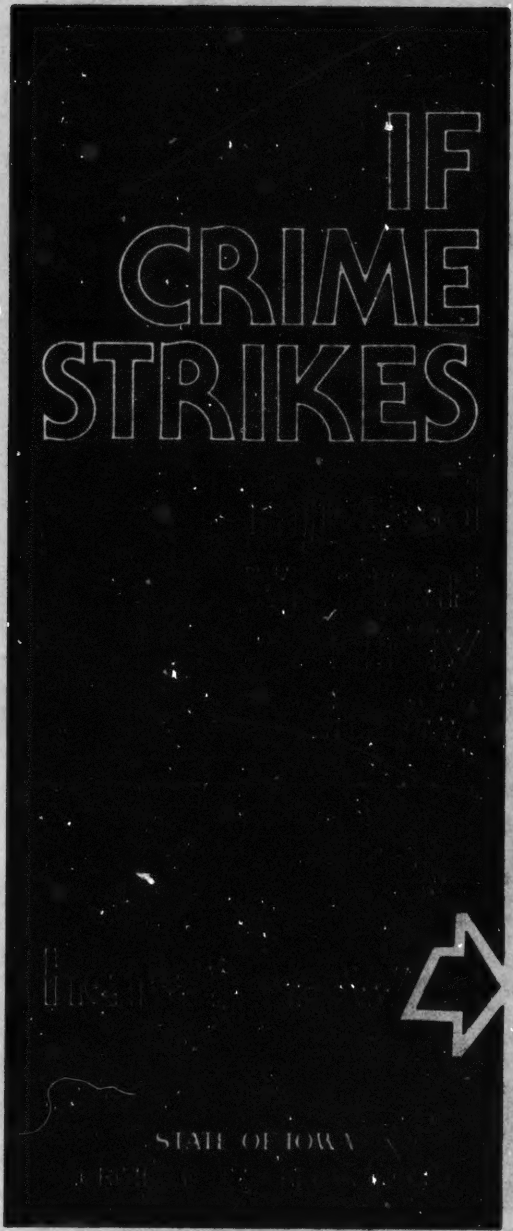
Mr. SCHAFFNER. Yes.

Senator **Hawkins**. Could we see a copy?

Mr. **Schaffner**. I would be pleased to share this with members of the committee. I would piggyback on what Mr. Zweibel just mentioned, one of the requirements for our compensation is that the victim must report the crime to a law enforcement agency within 24 hours of its occurrence, and we put that in there as an incentive because, as we know, the quicker the police can get on the trail while the trail is hot, the more likely that the crime is in fact going to be resolved. So we have put that in there as an incentive for quick reporting.

We also know that many crimes, particularly sexual assault crimes, for example, oftentimes go unreported and we are noticing now that the victim advocacy agencies, sexual assault centers, are encouraging victims to report so that they can become eligible for our compensation program. It is kind of an incentive, we hope.

[The brochure referred to follows:]



IF CRIME STRIKES

[illegible]

STATE OF IOWA

[illegible]

WHAT BENEFITS ARE AVAILABLE?

The State of Iowa has a new program to help reimburse you if you are an innocent victim of a violent crime. The maximum amount of financial compensation awarded is $2000.00 per victim. Compensation may be awarded to you as follows:

- For reasonable expenses for medical care needed as a direct result of injuries suffered in a criminal attack.
- For loss of income from your job because of bodily injuries suffered as the result of a crime.
- For reasonable replacement value of your clothing that is held by the police for evidence (up to $100.00).
- For reasonable funeral and burial expenses (up to $1000.00).

Compensation will be reduced by the amounts received or available from collateral sources, such as insurance.

HOW DO I APPLY?

[illegible]

WHO IS ELIGIBLE?

- An innocent victim who suffers bodily injury from a violent crime committed after December 31, 1982.
- A dependent(s) of an innocent victim who has died as a result of a violent crime which was committed after December 31, 1982.
- A parent or legal guardian of a victim who is under 18 years and has assumed responsibility for expenses incurred by the victim's injury.
- A person responsible for the maintenance of the victim who has suffered a loss or incurred expenses as a result of personal injury to the victim.

WHAT MUST I DO TO BE ELIGIBLE?

- You must report the crime to the local police department or county sheriff's department within 24 hours of the occurrence of the crime. (If the crime cannot reasonably be reported within that time period, the crime shall be reported within 24 hours of the time a report can reasonably be made.)
- You must file the claim application with the Department of Public Safety within 180 days after the date of the crime; or within 120 days after the date of death of the victim.
- You must cooperate with the appropriate law enforcement agency in the investigation and prosecution of the crime relating to the claim.
- You must cooperate with the Department of Public Safety in the claims process.

WHO IS NOT ELIGIBLE?

- A victim living in the same household with the criminal offender, unless a criminal conviction for the crime is obtained.
- A relative of the criminal offender, unless a criminal conviction for the crime is obtained.
- Anyone injured or killed in a motor vehicle, train or aircraft crash, unless the injury or death was intentionally inflicted.
- Anyone contributing to the infliction of his or her own bodily injury or death.
- A victim who was assisting, attempting or committing a criminal act.

COMPENSATION WILL *NOT* BE PAID

- For stolen, damaged or lost property.
- For pain and suffering.
- For losses paid or payable by other or collateral sources (health insurance, sick leave pay, disability insurance, social security, workmen's compensation, unemployment compensation, funds from other governmental agencies) or the offender.

HOW IS MY CLAIM PROCESSED?

Upon receipt of the claim form, an investigation is conducted. Witnesses, law enforcement officers, physicians and hospitals are contacted for reports.

After all the facts and information contained in your claim are verified, you will be notified, in writing, of the amount of your award payment. If your claim is denied or payment reduced, the reason will be provided to you in writing. If you are dissatisfied with the payment decision, you may write to the Department of Public Safety to request a hearing on the matter.

The time that it takes to process the claim depends on the complexity of the claim. It is possible for a claimant who urgently requires funds to request that an *emergency award* be made.

Senator Hawkins. In States that do not have victims' compensation program, do either of you have any knowledge as to who gets the profits from royalties on books written by prisoners or movies made from prison stories?

Mr. Zweibel. I believe in States that have not taken the initiative to have a compensation program, there would be no law that would protect the victims in this area either. New York State was the first State to pass what has been called the Son of Sam law, from the *David Berkwitz* case, and I do not recall the exact number. I believe it may be in the area of 15 States that currently have similar laws added to the books, but all those States have compensation programs.

Once again, I do not think there are any States that have similar laws that do not have compensation.

Senator Hawkins. Is New York the only one?

Mr. Zweibel. New York has a compensation program. There are 15 other States that have similar type of law on the books.

Senator Grassley. Did you want to comment on that?

Mr. Schaffner. Yes; the Iowa Legislature also enacted a Son of Sam provision that criminals could not receive profits for their books that they might write after some type of a serious crime, and that money in Iowa is tied up by the courts basically, and then it would be awarded back to the victim if that would be appropriate. The courts would then take royalties. The criminal would not prosper from his writings or her writings.

Senator Hawkins. You stated that one of the requirements for getting compensation would be the reporting of the crime within 24 hours.

Mr. Schaffner. Yes, correct.

Senator Hawkins. Is there any program you have for notifying the victims of their rights under the victims' compensation program?

Mr. Schaffner. Yes; the Iowa statute specifically prescribes that law enforcement officers, hospitals, social agencies make every effort to notify victims of the availability of the program. On our application form for victim reparation in Iowa, we have a box at the top asking the victim how did you first learn of the availability of a crime victim reparation program? Sixty percent of our claims are coming back saying they learned of it through the media. The media seems to be talking to lots of people. We had some videotapes made, public service announcements for TV and for radio, and that seems to be the single largest source of referrals to our program. So I need to emphasize how important publicity is in getting the message to potential victims.

Senator Hawkins. Are those PSA's made by the station or by your department?

Mr. Schaffner. They were made by our department in cooperation with our local educational TV network that actually did the productions for us at a very reasonable cost, and then they were distributed to the 13 or 14 TV stations that service our jurisdiction. So they were produced by our educational program, TV station, for use by all media in the State.

Senator Hawkins. Well, we all remember the rights of the ones that are accused, or as they are arrested, the police officer has to tell the criminal, of the alleged criminal of his rights. It seems to me that is a good opportunity to tell the alleged victim of his or her rights at the same time.

Is there any effort to having law enforcement people give that brochure to the people?

Mr. SCHAFFNER. Yes.

Senator HAWKINS. During the process of the arrest?

Mr. SCHAFFNER. We have suggested to our officers, and we, as I mentioned earlier, we have a little card that we give to each officer to distribute to crime victims and they affectionately refer to that as the "victim's Miranda warnings."

Senator HAWKINS. How small is this little bitty card?

Mr. SCHAFFNER. About like that [indicating].

Senator HAWKINS. And they are distributed at the time of the arrest?

Mr. SCHAFFNER. Yes.

Senator HAWKINS. Thank you.

Senator GRASSLEY. I have no further questions, but your work with the statute in your respective States on a day-to-day basis is very valuable information and experience for us to consider as we go about building upon the act passed last year. Thank you very much to both of you.

Mr. SCHAFFNER. Thank you for the invitation.

Senator GRASSLEY. Our final panel consists of John Stein, who is director of public affairs of the National Organization for Victims Assistance; and Mr. George Sunderland, senior program coordinator for Criminal Justice of the AARP.

Before you testify, let me personally thank each of you for your advocacy on behalf of some of the most vulnerable members of our society, the crime victim, and particularly as that is an inordinately difficult situation for elderly people to be in.

Mr. Stein, I would like to have you proceed and then to be followed by Mr. Sunderland.

STATEMENTS OF JOHN STEIN, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ORGANIZATION FOR VICTIMS ASSISTANCE, AND GEORGE SUNDERLAND, SENIOR PROGRAM COORDINATOR FOR CRIMINAL JUSTICE, AMERICAN ASSOCIATION OF RETIRED PERSONS, A PANEL

Mr. STEIN. Thank you, Mr. Chairman. I am delighted and honored to be here today, and I want to extend to you our heartfelt thanks for convening this meeting.

If I might digress, these have been disorienting times for me, and today is no exception. I have just come from a series of workshops dealing with youth victimization and here we are concerned with the victimization of the elderly. I can overcome that, I hope, in my comments.

I may add that both you, Senator Grassley, and you, Senator Hawkins, were mentioned with some warmth in our deliberations this morning.

Senator GRASSLEY. Go into some detail about that then, please. [Laughter.]

Mr. STEIN. Your introduction of S. 704 was warmly commented on, but as we got into the problems with missing children, Senator Hawkins' championship of that extraordinarily helpful legislation last year was warmly remarked on.

Senator GRASSLEY. Did they remark that I cosponsored her bill? [Laughter.]

Mr. STEIN. I am sure they did.

Part of my disorientation results in having been on the road for the last 2 weeks. But I have with me, for the record, a cleaned up version of my testimony, and if I may, I will summarize briefly from that.

Senator GRASSLEY. Please do. And it will be included in the record.

Mr. STEIN. Thank you.

It is a privilege for me to testify in NOVA's behalf on the problems of crime victims and the assistance which is their due.

I appreciate that your concern is over the elderly victims' of crime, a subpopulation of victims well deserving of that concern. But as Dr. Marlene Young, NOVA's executive director, and I, and others who have specialized in aiding elderly victims have learned, help for them is most likely to be offered when communities decide to aid all the victims of crime in their midst. What is instructive about focusing on the elderly victims—as Chairman Heinz and others have learned, to their great credit—is that the plight of the elderly helps us to comprehend the violence, tragedy, and injustice that afflict not only these innocent citizens, but most other victims of crime.

It is in that context that I will review the impact of crime victimization generally, emphasizing how that impact is exacerbated in cases involving elderly victims, and then propose a range of services which we feel is essential to meeting the needs of all victims, the elderly included. My testimony then is directed at the broad sweep of public-policy changes sought by the victims' movement we represent, not at any one legislative proposal which you, Chairman Grassley, and others have laudably introduced in this session of Congress.

Let me turn then first to the victim needs. There are three obvious injuries that afflict victims, and one injury that is not so obvious. But it has been our experience that even the obvious injuries are not so obvious. And the plight of the elderly helps to illustrate that in tragic ways time and again. The physical injuries that crime victims endure, for example, are easily appreciated when the crime is extremely brutal and the injuries are obvious. But Dr. Young, in her work with the elderly in Portland, Oreg., came across, for example, one woman who had been the victim of vandalism, that is to say her windows had been broken out. The trouble is that it happened in the dead of winter, and when the police and Marlene Young came upon this woman, she had been trying to survive for 2 weeks huddled up in a couple of mattresses in her apartment. Two weeks later, she was dead in the hospital of pneumonia. We do not think of vandalism as an injurious crime, but obviously it can be terribly much so in the case of the elderly.

Similarly, as was mentioned before, a less injurious crime like a broken hip resulting from a purse snatch is not thought to be terribly devastating, but in the case of the elderly, the research, again, that Dr. Young did back in the seventies in Portland suggests that perhaps as many as one-quarter of elderly people suffering a minor injury like a broken hip will be dead within a year. The evidence seemed to suggest it was not the injury directly, but it was the relocation of that victim to a nursing home, the total disruption in their lives, their reduction to a state of dependency, that brought on an early death. But obviously there are some terrible injuries, and the focus on victim compensation, of course, deals with that.

Let me just at least make mention of one injury which we think of as the most tragic and yet too is overlooked—I am talking about murder. Too often, the popular belief is that there is no greater tragedy that could happen, but at least the victim is at peace. The evidence is that the victim has left behind many other victims who are suffering through what is often a lifetime of grief and emotional turmoil, and it is tragic the way we often overlook the surviving family and friends of homocide victims.

As to the most common sort of injury that is afflicted on crime victims, that is to say, financial injury, the common thought is, well, we can protect ourselves with insurance, and many of us do. But we find that insurance has its deductibles, $100, $500, and that often, after a burglary, for example, the insurance policy will pay maybe a dime on the dollar for the replacement costs. And so insurance is a small benefit where it is available. The sad thing is that the elderly, can no longer afford it. They are probably the most interested in obtaining insurance. They are perhaps the most prudent sector of society in that sense. But they are often the least able to purchase it. And for the elderly, the cases are just too frequent to show that the loss of $50 can mean the difference between decent meals over the next week or two and surviving on ketchup and crackers, as we have found with some elderly people who are the victims of a "small" larceny.

Similarly, we find in that kind of financial loss that something terribly painful is lost in the process. I remember a victim-assistance worker in Florida, a retired Navy NCO, who had gotten into the field because he had been burglarized three times, and the third time they stole the ring that he had given his wife some 3 years before she died. The loss of the sentimental object to him was much more devastating than all the other losses. That was obviously a priceless loss. That brings up the third and ominous injury that victims endure, and that is the psychological cost of crime. A crime is a shocking and stunning event for virtually all of us. It is unhinging, it is unsettling, and for too many people it precipitates what can be a long-term crisis, resulting in an inability to work well, a falling apart of family relationships, and the like. Many of these problems are exacerbated in the case of elderly victims. It has been said, for example, by some eminent gerontologist, that jolts of adrenoline and other "stress hormones" are more wearing on us as we grow older. The import of that biological finding is that all stresses, euphoric or distressing, are rougher on their bodies and on their psyches, and so crime exacts a higher psychological price for the same event when we are older than when we are younger.

Moreover, elderly people, we appreciate, are living in what is called the "season of loss." The older person has lost his job, he has lost much of his income, he has lost his status that is given to him, he has lost many family members and friends through death, he has lost his mobility, he has lost his health, he has often lost his home. This battery of chronic losses among older people makes them evermore susceptible to sort of a final crushing blow, and crime often produces that. For all these reasons, the special sense of unhappiness that we experience with victims is particularly exacerbated in older people.

The thing that seems to trigger our greatest unhappiness, after having been held up, or mugged, or burglarized, is a sense of helplessness that someone took away our autonomy, our independence, if even for a moment. For the older person who is often suffering a depression from those depersonalizing feelings, that wresting away his final sense of worth in society by the criminal can be extremely devastating.

The final need that crime victims seem to have has often been called the "second injury." I think it has been alluded to earlier today. It comes from all of us, society at large, as well as in particular from the agents of criminal justice. I know in my work with the elderly, I have heard examples of it time and again. I remember in Flatbush, in Brooklyn the typical older woman who was burglarized will get a call from the kids who now live further out in Queens, in a better neighborhood, and they say, "Ma, why are you still living there in Flatbush? I told you to move out." The message is, Ma, it was your fault that you were a burglary victim, that your sentimental attachment to that crumbling neighborhood does not make any sense. Ma, you are stupid.

Sadly enough, crime victims themselves tend to say, "I was stupid, it was my fault." And for the elderly to have that reinforced by family and friends makes their miseries all the worse.

We hear the same kind of comment from the friendly police officer. Following up on an apartment burglary, the officer's wisecrack is, "hey, lady, you call that a lock?" Sometimes the comments are made in a friendly way, but they all seem to reinforce some crazy notion that the crime was the victim's fault. It just is not true, and we should stop trying to indicate to victims that it is that they who were at fault. They are not only blamed but they are stigmatized. For the elderly, they are particular stigmatized. It is as if, after having become victims that they are carrying around a dread disease and no one wants to talk to them. Appalling, most surviving families, in homocide cases lose most of their friends. The stigmatizing process, in short, has tragic consequences.

And now added to these are the ordinary bureaucratic workings of the justice system, and these seem to add to this second injury. These are public bureaucracies, after all. They may mean well by the people they are supposed to serve, but they operate in routine ways that seems to be insensitive. If there is an arrest, and prosecution, what is going on during those processes? Those processes are often baffling, particularly for the elderly. The natural desire to understand what is going on in an alien environment, to understand what is going to happen next and what is expected of them, all of these things become a source of acute anxiety, and the system rarely answers the victims' desire just to understand.

Further, their desire to have their voices heard, the facts that they have to offer, their opinions, their feelings, no one wants to hear that. Instead, they are treated to a kind of bureaucratic indifference, they are subjected to endless continuances, they are told about plea bargains that they had no voice in, or understanding of. All of these further erode every sense of self-respect and dignity that older people are fearing are under erosion anyway.

That outlines the kinds of needs that all crime victims, particularly the elderly, bring to society. How can society respond more effectively and meet those needs and adjust in a compassionate way? Well, our organization over the last 9 years has been trying to catalog in a comprehensible way the kinds of services that should be available to the elderly and all others. We have developed this into a chart which is illustrated in this booklet in front of you.

Let me, if I may, go through quite briefly the eight stages of service that we would like to see in place for all victims of crime. In each instance we obviously would like to see that—the services and the procedural changes are tailored to the special victims being dealt with, such as the elderly.

The first three stages are what we would like to see in place, and in fact we can find examples of them being in place, for all victims of crime, independent of whether there is an arrest or prosecution. The first two are closely linked. The "emergency response" and the "victim stabilization" speak to what a police dispatcher can do to help stabilize someone in extremely tense emotional period of their lives. It is important, as a professional matter to try to get a coherent story from the distressed caller so that they can get an officer to them quickly. But it is also, we find, very helpful in the victim's recovery if the response at that stage is sensitive, if someone can stay on the telephone with them for a longer period than just a couple of minutes.

The same concept is what we are seeing now put in place by the patrol officers who come immediately to an emergency call from a victim. They, too, are learning both psychological and physical first aid techniques. They are borrowing from the crisis intervention people to learn how to interview victims in a way that helps bring them down off their adrenalin high, to help them stop shaking, to help them reflect back, to get a sense that they are safe now, and to reflect back about the crime in ways they can communicate this to an officer in an accurate, comprehensible way.

With both of these two service stages, we speak a lot of the police officers' responsibility, but we mean not to limit it to them. In many jurisdictions, I think Florida is the leading one, the arriving patrol officer has available to him a crisis intervention worker who is there, who can come almost immediately to carry on with the victim, at that crisis stage.

The third stage of this service continuum is what we call "resource mobilization." That is the whole battery of social services of counseling and the like that we would like to see in place in many places. It is in place to help victims recover, to be made whole again. Obviously, this is the place where victim compensation plays a crucial role for at least that small segment of the victimized public who have suffered serious injury or death in the family.

The five stages after an arrest is made, I think, can be covered quite briefly. A few jurisdictions, such as Cook County in Chicago, are beginning services to crime victims immediately after the arrest. As soon as the case goes to the district attorney's office they are trying to find out some things from the victim right away and to meet his or her needs, particularly getting information from the victim that the bail-setting magistrate can have. If the victim has any grounds for a fear of retaliation, intimidation by the person just arrested, the magistrate will know that, and he make it a bail condition that the defendant stay away from the victim. And that can be a very effective way of giving some sense of safety to the victim.

The next three stages all focus on the court appearance—Informing him, making sure that the victim is notified of when the hearing date is, the trial date, giving him information about the court process, trying to get rid of that alien sense of it all, trying to put him on telephone alert, and the like. And one crucial thing that many district attorney's offices are now doing is, getting the victim involved in plea bargaining negotiations that are taking place, which obviously usually take place before any trial date. Many district attorney's are finding that in consulting with a victim over their ideas of what a fair plea bargain is that the victim is persuadable that the prosecutor is recommending a fair and just result, that it is worthwhile not having to come to court and testify. And they are extremely grateful for having been asked their opinions.

The prosecutor is not bound by the victim's opinions, the victim has no veto. But to ask of the person who is hurt how he would like to see the case disposed of, is a worthwhile courtesy at this stage.

At the court appearance itself, prosecutors and court officials are simply trying to make a day in the courthouse more pleasant. It is that simple. Help with transportation when needed, (often it is needed with the elderly), a separate waiting room away from the defense witnesses the defendant while witnesses are waiting for trial, decent witness fees, coffee, pleasant surroundings, or, in general, same basic civilities.

And then the third one, after the guilty plea or a finding of guilt, we call for a consultation with victims over the sentence before the sentencing judge makes his decision. Here the critical device is the so-called victim impact statement. What happened to the victim? What was the emotional, the physical, the financial impact of the crime on the victim? We want to make sure that the judge weighs that in determining what a fair sentence is on the now, confessed or, convicted offender. After all, what he owes his victim should surely have priority over, or equal status with, figuring out his debt is to society. The victim impact statement is the device for doing that.

And finally, after the sentencing is over, we believe that provision should be made for the victim so that he is informed of other decisions affecting his offender. His offender—notice of whether or not he is going to be released on bail or parole, or has escaped from prison, or has a probation revocation hearing. These are matters of some considerable concern to victims, and they have a right to know about them.

That covers the broad social policy changes that we have been pressing for both in the Federal Government and in the States and localities around the country.

With that, I would like to draw my thoughts to a conclusion.

Obviously, these rights and services that we are speaking of cost money. The experience around the country is that, as public services go, these are among the cheapest to provide. But they are not free. Even a good volunteer program needs a paid coordinator and trainer. The kind of legislation that Senator Grassley has introduced, and others we hope will be considering in Congress this year, will help address, I think, the important need of funding for these kinds of rights and services for victims of all crime.

In our view, this hearing marks a sincere effort of our Government representatives to look further than they have in the past, to look hard at the crisis of crime as it affects those least able to overcome its effect, our victimized elderly.

We, at NOVA, are heartened by your legislative initiatives and interests, Senator Grassley, and we applaud you for convening this factfinding hearing. We look forward to offering you what knowledge and suggestions we can as you seek to transform public misery into remedial public legislation. We are of the belief that the U.S. Congress now has the will and the wisdom to provide justice for all, even the victims of crime.

Thank you.

[The prepared statement of Mr. Stein follows:]

"VICTIM ASSISTANCE AND THE ELDERLY"

Testimony of
John H. Stein,
Director of Public Affairs
National Organization for Victim Assistance
Washington, D.C.

Chairman Grassley and members of the Aging Subcommittee, I am John Stein, the Director of Public Affairs of the National Organization for Victim Assistance. It is a privilege for me to testify in NOVA's behalf on the problems of crime victims and the assistance which is due them.

I appreciate that your concern is over the elderly victims of crime, a subpopulation of victims well deserving of that concern. But as Dr. Marlene Young, NOVA's Executive Director, and I, and others who have specialized in aiding elderly victims have learned, help for them is most likely to be offered when communities decide to aid all the victims of crime in their midst./What is instructive about focusing on the elderly victims — as Chairman Heinz and others have learned, to their great credit — is that the plight of the elderly helps us to comprehend the violence, tragedy, and injustice that afflict not only these innocent citizens but most other victims of crime.

It is in that context that I will review the impact of crime victimization generally, emphasizing how that impact is exacerbated in cases involving elderly victims, and then propose a range of services which we feel is essential to meeting the needs of all victims, the elderly included. My testimony, then, is directed at the broad sweep of public policy changes sought by the victims' movement we represent, not at any one legislative proposal which you, Chairman Grassley, and others have laudably introduced.

Victim Needs

NOVA's nine years of analysis of victim needs has taught us that there are three primary injuries which victims may suffer: physical injury, financial injury, and psychological injury. In addition, victims are often subject to a secondary type of injury — that inflicted by the criminal justice system or the society around them. Each of these tends to parallel unique vulnerabilities among the aged which make them important teachers of our own vulnerability to crime.

1. Physical Injury

Physical injury is the most obvious burden a crime victim can suffer. The impact of hospitalization, the pain of broken bones, the permanence of paralysis, the grief of murder, all are stark and clear. But perhaps our understanding is not all that clear. Do we truly consider the impact on the victim, or do we avoid that confrontation by labeling the injuries "minor" by reference to some "objective" standards?

Far too often, "minor" physical injuries can have devastating consequences to the frail and the aging. The injury may result in long-term hospitalization or even death due to the elderly patient's decreased healing capabilities. A non-injurious crime — vandalism — caused the death of one older woman. Her windows were broken in the dead of winter. Having no one who was regularly in touch with her, she went for two weeks before she was found huddled under a mattress, trying to stay warm in freezing weather. Two weeks later, she died in the hospital of pneumonia.

The impact of more obviously-injurious crimes may also be overlooked. The change from an active, self-sufficient individual to one crippled by a fall or a blow can undermine the foundations of a person's life. Often there is not only the pain to endure but also the stigma borne by the handicapped.

The elderly victims of assaultive crimes illustrate the bleak repercussions of even "minor" injuries — like a broken hip sustained in a purse-snatch. Reviewing the records of such victims in Portland, Oregon, my colleague Marlene Young found that at least one-fourth of the victims had died within a year of the crime. The evidence indicated to Dr. Young and her colleagues that the distress of being relocated to a nursing home, far more than the injury itself or "old age", was the probable cause of most of those deaths.

Indirect assaults, less-injurious assaults, and, finally, murder — the ultimate violation. At least the murder victim cannot suffer anymore — an obvious truism sustained by popular mythology. But what the pulic overlooks is that murder makes victims of more than just the dead. Left behind are loved ones consigned to a life of grief, anger, and heartache. And who speaks for them? Who helps them survive in the void created by death?

2. Financial Injury

Financial loss is the most common result of crime. Burglary costs Americans some $3 billion a year, larceny around $2 billion, and arson at least $1 billion.

What those figures signify in terms of the average victim is often a debilitating blow. While the impact can be ameliorated by private insurance for those who have the foresight and the wherewithal to purchace it — the elderly tend to have the foresight but not the wherewithal — in fact such coverage is rarely adequate. Not only do most insurance policies have deductibles which require the insured to pay the first $100 to $500, but actual reimbursement rates may be as little as 10% of the replacement value of the damage or loss.

Recently, our office receive a call from a woman whose home at be virtually destroyed in a shoot-out between law enforcement officers and a visiting brother-in-law who was mentally ill. The police agency indicated that the property damage would not be paid from public coffers since it was caused by the woman's deranged brother-in-law. Her insurance company refused to pay because it was "an act of war."

After we pool together the uninsured, the "de-insured", and the under-insured — that is, most of us — we must consider the effect of financial harm of crime on persons, like the aged, who are living on low, fixed incomes. The impact can be devastating. A larceny of $50 may mean that the victim goes without food, or medication, or even loses his or her apartment. The loss of a television set may be the severence of an older person's only link with the world.

3. Psychological Injury

Crime produces extraordinary stresses. Victims of even the smallest kind of crime suffer some discomfort and stress. Estimates are that as many as 20% of all victims have severe stress reactions and that one-fourth or more of these go into emotional crisis.

For several reasons, elderly victims are among those vulnerable to emotional crisis.

Physical, age-related changes have much to do with the elderly's vulnerability to psychological injury. Some have suggested that the single most critical age-related difference in physiology is a diminishing ability to respond to stress (physical and emotional) and to return to a pre-stress level. This can be termed a decrease in homeostatic capacity.

"With stress — whether physical, as in exercise, or emotional, as in excitement or fear — the magnitude of displacement is greater, and the rate of recovery is slower with increasing age." (Ruth B. Weg, "Changing Physiology of Aging: Normal and Pathological", in Aging: Scientific Perspectives and Social Issues, Diana S. Woodruff and James E. Birren, eds.)

In addition to this physiological change, the older person normally lives in a "season of loss". He suffers loss of job, loss of income, loss of status, loss of family members and friends through death, loss of mobility, loss of health, and sometimes loss of home. This battery of chronic losses results in chronic stress and tends to increase the crisis risk of any extraordinary stress-precipitators.

As a result, the stages of the crime/stress reaction may be more exaggerated in the elderly. The immediate reaction to crime is shock and disbelief. This reaction may be increased in the elderly because they may have been brought up in a society or neighborhood that had little crime, and this is the first time they have ever dealt with such a violation.

In the aftermath of shock, normal reactions include fear, anger, depression, frustration, etc. These reactions reflect the sense of helplessness felt by crime victims, a loss of autonomy and, in its place, a sense of dependence and helplessness. If the aftermath of the criminal event can impose this kind of distress on even younger victims, imagine its cruel toll on the older victim already depressed by the loss of true independent status in our society.

4. The "Second Injuries"

Though the injuries inflicted on victims by the criminal are often severe, the injustices and indignities of the criminal justice system and the society around them are even more traumatizing to many victims.

Most victims suffer the second shock of realizing that being a victim is frowned on by society. Common questions put to the victim are: "Why didn't you lock the door?", "Why were you on the street after dark?", and, "Why havn't you moved from that lousy neighborhood?". All such questions indicate that the victim could have avoided becoming victimized and that therefore he is at least in part to blame.

Victims are further surprised to find themselves stigmatized. No one wants to hear about crime's horrors. Most of us are too frightened ourselves to want to know that we, too, could become a victim. We tend to avoid anguish, pain, mutilation, the reality of sudden death — and we shun those who carry these unwanted messages.

These sources of distress are again exaggerated by the problems of aging. The aged already suffer stigma. Popular mythology — to which police officers and prosecutors are prey — depicts the older person as being decrepit, senile, and incompetent. Older people are often afraid to admit to families and friends that they have become victims for fear that their loved ones will urge them to move out of their home, perhaps into a nursing home, or will use the situation to prove that they are incompetent. Older people also worry inwardly about their own competence. They worry that perhaps it was their fault and they wonder if it would have happened if they had just been younger.

If the criminal is arrested, the victim may suffer even more than simple blame and stigma. He may be subject to countless interviews, investigations, hearings, and other court procedures. Throughout this process, his own needs may be completely ignored. Most jurisdictons do not provide transportation to and from the police station or the court house for witnesses. It is rare to see the victim or witness fully briefed on court procedures or to let them know what will be expected in their direct or cross-examination. The courthouse itself may be completely uncomfortable, with no suitable seating, no accomodation for meals, and no way of avoiding the company of the offender and his family.

The court proceedings and the lack of services may be particularly onerous for the elderly. Often they do not have their own cars and don't have the stamina to walk to the bus-stop — if there is one. For health reasons, they should eat regularly and take medication which may not be feasible in many courthouse settings. They may also need a place to rest and relax in order to sustain strength for a long day.

And for the elderly, the natural desire to comprehend what is going on in an alien environment, what is likely to happen next and what is expected of them, often becomes an acute source of anxiety. When one appreciates that even neophyte police officers, prosecutors, and defense lawyers are disoriented by the criminal court process, one can begin to grasp what the typical elderly victim or witness goes through in order to meet his civic duty. For him, the endless continuances, the signs of bureaucratic indifference, the seemingly-inexplicable plea-bargains, the reluctance of all the decision-makers to hear the victim's facts, beliefs, and opinions, all of these are assaults on his dignity and confirmations that he no longer counts for much of anything in our society.

In light of the several kinds of injuries suffered by victims of crime — the elderly most painfully — it is important to see what types of programs have begun to emerge in response to these needs.

Victim Services

The National Organization for Victim Assistance suggests that there are eight important stages of service which need to be implemented to help victims and witnesses from the time of the crime itself all the way through the post-sentencing period. Three of the service stages apply generically to all victims of crime; the other five apply to victims and witnesses involved in the prosecution of the accused or convicted offender.

I encourage the members of the subcommittee to consider these eight stages as you investigate victim assistance. In our view, the services associated with each chronological step are essential for appropriate treatment of victims. They could be as common a form of public service as libraries, sanitation, and law enforcement if a modest level of funding and a decent level of legislative and executive support were available to sustain them.

The following is a brief enumeration of the services:

1. Emergency Response.

At this stage, services are rendered by the first person whom a victim contacts after the crime. The response at that stage is considered critical to the victim's emotional well-being, since a thoughtless or unsympathetic response can increase the level of stress and possibly precipitate crisis.

The person who is responding to the victim can be a police dispatcher, a neighbor or friend, or even a passer-by. The fact that many of the first respondents do not work in a public service program suggests the importance of public education on how best to handle a traumatic situation — to learn both physical and psychological first-aid, and to know how to contact professional emergency services.

In some jurisdictions police operators are trained to identify priority calls for help on the basis of the described crime and of the seeming distress of the victim. Other jurisdictions attempt to achieve this kind of responsiveness by patching emergency calls to the responding police officers or to individuals trained in crisis intervention techniques so that they can begin to administer crisis intervention over the telephone as needed.

2. Victim Stabilization.

This stage is often difficult to distinguish from the first stage of the victim service system, for "victim stabilization" is still one involving emergency circumstances. It begins after the most elemental emergency needs are met — like getting the victim away from danger, or to a hospital, or into some dry clothing.

The response needed at this stage should emphasize the need to reduce fear, assure the victim of his eventual ability to adapt to the situation, provide him with necessary help and referrals, and prepare him for what is likely to happen next in the justice system.

The most common service providers at this stage are the police and other emergency service workers. A number of American police departments work with crisis teams who are on call to respond to criminal victimizations either at the same time as a police unit or shortly thereafter. Typical of such jurisdictions are Des Moines, Iowa (the expected host site of NOVA's 1984 annual conference), Pima County, Arizona, Evanston, Illinois, Indianapolis, Indiana, Glendale, Arizona, Chester County, Pennsylvania, and Ft. Lauderdale, Florida.

It is exactly at this stage that the police can perform their job more effectively after receiving appropriate training in victim stabilization, using skills perfected by the crisis intervention specialists in programs like the ones just mentioned, but without regard as to the availability of these civilian auxiliaries. An experiment in Oxnard, California, is examining the effects of such victim stabilization or "crisis management" training on police effectiveness. It is hypothesized that stabilizing the victim prior to conducting a police interview can increase the amount of useful information gained in the interview itself.

Whatever the results of that "outcome" study, it is evident in the Oxnard training program and others like it that ordinary patrol officers are enthusiastic to learn how to deal kindly and masterfully with the turbulent and painful experiences they confront daily — both on and off the job.

3. Resource Mobilization.

The third stage of victim services is called resource mobilization. This involves the most commonly-provided cluster of services in the United States. It is offered by almost all kinds of victim assistance programs, from crisis response groups to prosecutors' victim/witness units.

This stage starts with the need to assess the general losses that have occurred to the victim and to help him mobilize his personal and social resources to deal with those losses. It may involve identifying friends or local agencies with emergency funds or repair services, or help in filling out forms for victim compensation, or arranging long-term counseling or physical therapy services, and so on.

One part of resource mobilization which is being increasingly recognized as a vital part of the service structure are crime prevention materials and services. Crime prevention has been developed in many victim assistance programs both as a way of reducing opportunity for repeat victimizations and as an adjunct to counseling services.

4. Post Arrest.

The fourth and subsequent stages of service take place if and only if there has been an arrest and prosecution; the first three stages of service are provided whether or not the offender is apprehended. The fourth stage could begin concurrently with any of the first three stages, since the arrest may take place at any time.

While many service programs provide assistance to victims and witnesses in preparing for trial, few programs provide services to victims and witnesses immediately after the arrest. NOVA's service system, developed out of the experience of the most thoughtful and adventurous programs, suggests that this is but the first stage in which the victim's natural desire to have a voice in the system's handling of his wrongdoer — or accused wrongdoer — should be accomodated.

Victims and witnesses should be informed and consulted on the the prosecutor's charging decision and on the magistrate's selection of bail conditions. Since in most jurisdictions, the bail decision is made within twenty-four hours, victims should have a right to have their views and concerns represented — such as attaching a "stay-away" condition to a personal release order. An example of that kind of involvement exists in Cook County, Illinois.

Similar services which should be immediately available take on the problems of intimidation and harassment. Many victims fear retaliation, and in cases where the offender is known to the victim and is quickly released on bail, their fear increases. Strict enforcement of existing statutes dealing with protection of witnesses is needed. NOVA has proposed that in all bail hearings a "victim intimidation statement" be mandatory, and when the victim is fearful, that bail be conditioned upon the offender staying away from the victim. Such bail conditions are used in a number of jurisdictions now in cases of domestic violence, but rarely are they considered on a routine basis for all crimes.

5. Pre-Court Appearance.

Services prior to the victim's court appearance constitute stage five in the service system. These services are most often performed by the prosecutor's office and have been refined as an tool of good witness management practices, long promoted by the U.S. Justice

Department's criminal-justice improvement efforts over the past decade.

Services at this stage include: orientation and preparation for the criminal justice process; information on case status and scheduling; advance notification of hearings; witness preparation of testimony; employer intervention; consultation on plea-bargaining; and emotional counseling.

A number of programs have developed outstanding service schemes for this stage. A few examples are in Ventura County, California, Peoria, Illinois, Middlesex County, Massachusetts, St. Louis, Missouri, and Milwaukee, Wisconsin.

6. Court Appearance.

Stage six involves support services for victims and witnesses if they must make a court appearance. These services are oriented toward relieving practical concerns and reducing the financial cost of participating in the criminal justice system.

Services at this stage involve providing transportation to victims and witnesses; establishing a separate waiting room for prosecution witnesses; escort services; counseling; childcare facilities; preparation for case outcome; and provision of meals or parking costs.

Most programs which provide effective pre-court appearance services also provide good in-court services. However, there are a few such services which depend on more than the goodwill of the service provider. A key example is the provision of a separate waiting room: while most courthouses have the space to provide such a service, unless court administrators are persuaded of the need for such a service, the waiting room will not be provided.

7. Pre-Sentence.

Pre-sentencing services, stage seven, are not provided in many jursidictions. Such services involve notification of the victims and witnesses of the verdict or plea; development and use of a Victim

Impact Statement at sentencing; the development of restitution plans; and counseling.

The Victim Impact Statement, by which the physical, financial, and emotional consequences of the crime are spelled out to the sentencing judge, has become a hallmark of the victim rights movement, reflecting the empassioned concern of many victims. There are now fourteen states, along with the federal government, which mandate the use of Victim Impact Statements and a number of others which have such legislation pending. This kind of involvement of the victim at the sentencing stage — presenting the facts of what the offender did to the victim, if not necessarily the victim's desires about sentencing — has had an impact both on the kind of sentence received — one that is not necessarily more punitive, incidentally — and on the victim's own state of mind.

8. Post-Sentence.

The final stage of service, post-sentencing, has not been dealt with much until very recently. The most important part of this service stage is the notification and involvement of the victim in parole hearings and in parole and probation revocation proceedings. A number of highly-publicized cases has brought this subject to the fore over the last year, but few jurisdictions have acted upon the needs presented. However, Oklahoma and Massachusetts both have statutes requiring such notification, and the Massachusetts victim/witness programs, which exist in all of the larger prosecutorial districts in the state, have developed procedures for effecting such notification well.

Conclusion

This review of the eight service stages both itemizes services which now exist in various jurisdictions and outlines a consensus reached among service providers on what is needed by way of service at each stage. While no service program in the United States seems yet to provide a response to all of the needs uncovered, many attempt to provide core services to especially-vulnerable victim groups — such as the elderly.

The single largest obstacle for the development and maintenance of programs for the elderly and other victims is the lack of funds. While some progress has been made in developing state-level aid to local programs — such subsidies have been established in fourteen states — wherever services do exist, most continue to struggle for survival. And most jurisdictions have virtually no services to begin with.

Last year, under the leadership of Senators Heinz and Laxalt in this body, and Representatives Rodino and Fish in the House, the Victim and Witness Protection Act was enacted and the federal government took a major step in setting standards for providing assistance and protection for victims.

I am sure that today's hearings reflect a continued interest in the need for a balanced justice system and a continued commitment by the Senate to provide answers to the countless victims who innocently suffer at the hands of criminals.

To you, as the lawmakers of the land and the representatives of your victimized constitutencies, we direct this request — that you bring a new measure of compassion and fairness to the hidden tragedies that crime leaves behind — the victims.

Our country's extraordinary stature in human history has been built on our people's trust in popular government, and on our government's capacity to respond effectively to global crisis. Let us not be slow in responding to our crises within. This hearing marks one sincere effort of our government representatives to better understand the crisis of crime as it affects those least able to overcome its effects, our victimized elderly.

We at the National Organization for Victim Assistance are heartened by your legislative initiatives and interest, Chairman Grassley. We applaud you for convening this fact-finding hearing, and look foreward to offering you our knowledge and suggestions as you seek to transform public misery into remedial public law. We are emboldened to believe that the United States Congress has now the will and the wit to provide justice for all — even the victims.

Senator **Grassley**. Mr. Sunderland.

Mr. **Sunderland**. Mr. Chairman, AARP is deeply appreciative of the opportunity to support the work of this committee and, of course, it is an extremely important issue with us.

We now have passed our 14th million mark in members, and are closing very rapidly on 15 million.

In the interest of time, with your permission, Mr. Chairman, I would like to summarize, make a few comments, and present a prepared statement for the consideration of the members of this committee and the staff.

It was refreshing to hear your opening remarks even though they were very brief. I think they clearly indicate the compassion, the interest, and the direction that you intend, and members of this committee intend, for these hearings to take and in subsequent legislation to lead the way.

For too long the victim has been overlooked in our criminal justice system and I think it is time, although late in coming, that the victim be made a part of this judicial process.

There are a few points that I would like to emphasize if I may. In the last 12 years during which I have been director of Criminal Justice Services of the American Association of Retired Persons, the criminal victimization of the elderly has been a very important, almost a central part of our work and I try to review or have staff review the principal research products that are being produced, or have been produced during this period.

Despite all the inquiries that have been made into this subject, I believe there is a greater controversy today than when it first came up in the national polls of 1968 and 1969.

At this point I would like to state that our internal surveys, AARP's surveys, over the past decade have consistently placed crime as the No. 2 concern of older persons, coming only after income maintenance.

Now, there are other issues in some localities that place second or third, such as health, as you would expect; and for those who live in country areas, very often transportation is very high on the list.

But the subject that this committee is addressing we know, and the Harris and Gallup polls have also corroborated this, that crime is a very serious concern and in urban areas and some localities crime against the elderly is the No. 1 concern even surmounting the problems of maintaining life, limb, and shelter and food.

Now, one of the controversies that I would like to deal with very briefly is frequently raised by the media and researchers; namely, are older persons the most frequently or the least frequently victimized by crime? We can answer that by saying both. We are the most frequently victimized by some crime types and the least frequently victimized by other crime types. So you cannot say that any age group is the most or least. It must be crime specific.

In some of the outstanding works done in some of the States, particularly in the State of Florida where we have over 1 million members and have an office to maintain service to those members, about the same conclusions that we have come to are supported by the Crime Commission hearings in Florida a few years back.

I think what our researchers overlook is that so much of the research being conducted these days is done by people in air-conditioned offices who are only reviewing statistics. I would like to impress upon the members of this committee that that is no way to look at victimization. You must get to the victims and experience and feel those torments, the torment and the harm that follows some victimizations. And particularly with the elderly, if it is a fear-provoking confrontation or merely a vicarious victimization, which is greater in the elderly than in other age groups. What we mean by that in our business, is when an older person hears of a crime being inflicted upon a friend or acquaintance, the impact of that vicarious victimization, although nonexistent to the individual, may as seriously deprive that individual of freedom of movement as an actual victimization.

So—and I have talked with the Director of the Bureau of Justice Statistics about this—we too often do not consider the impact, the intangibles of victimization. And if we were to carry this to the absurd, if an older person is so fearful as to never leave the home and never be victimized, and never show up on the statistics, then many would say that there exists no problem because there has been no victimization.

So I must stress, if I may, the seriousness of these intangibles and the impact of victimization to the elderly.

As has been mentioned here earlier, there are multiple victimizations, not only by the criminal but by the system. I think no one is more eloquent on this subject than Hon. Lois Herrington, the Assistant Attorney General, in her writings and statements pertaining to this subject. But even beyond that, we victimize the individual again through the tax collector. And I do commend the members of this committee for the provisions in this bill which would place some of the responsibility where it belongs, on the criminal, and not impose the responsibility for restitution and rehabilitation upon the noncriminal public, the taxpayer.

We have an offender-oriented criminal justice system. Crime statistics are offender-oriented. The trial or plea bargaining or the endless continuances are at the offender's convenience. The State provides legal counsel for the offender. There seems to be no shortage of public service organizations to serve the offender.

Then finally, after all the costs that have ensued, the taxpayer again must pay for the offender.

I would like to especially commend the committee for certain provisions of this bill, particularly those pertaining to restitution, whether it be by money or service. I would like to see more of that for those serious habitual offenders who place themselves in a position of being judgment-proof and who hide under that cloak to escape the responsibility for their crimes.

I would like to say in closing that we are dealing with a very sick system and there are few people who scrutinize the entire criminal justice system. For instance, Chief Ray Davis of Santa Ana, Calif., tracked 3,800 felony filings; only 37 went to trial. You might say that was a peculiarity of Los Angeles. Not so. INSLAW—Institue for Social and Law Research—studied 21 cities including Washington, D.C., and that is about the percentage in Washington, D.C.

Specifically, as an example, INSLAW tracked 8,600-plus commercial burglaries in Washington D.C., 87 offenders were convicted. That does not mean that 87 people went to prison. As a matter of fact in this country today, only 40 percent of our murderers go to prison. And if you want to review statistics on rape, it is incredibly poor. In a review of a study done by Dr. Donna Schromm, I selected two cities and carefully analyzed the data and we got in those two major cities, Seattle and Kansas City, one felony or misdemeanor conviction, for every 318 actual rapes. Conviction does not mean prison. And it goes on and on and on. For instance, and I do not want to quote too many statistics but I am trying to emphasize here that we are dealing with a very difficult problem in a system that I think is not functioning very well in the metropolitan areas. It functions very well in the country. In the large cities it is in a virtual state of collapse. In most States we get barely one felony conviction per police officer per year.

With that, Mr. Chairman and Senator Hawkins, I again express the appreciation of my association for the invitation to come here. We do have what I consider to be a capable and rather large staff. If we can help you, the members of your staff, we wish you would call upon us and let us know what we can do to advance these extremely worthwhile efforts. Thank you very much.

[The prepared statement of Mr. Sunderland follows:]

AMERICAN ASSOCIATION OF RETIRED PERSONS

CRIMINAL JUSTICE SERVICES PROGRAM DEPARTMENT

STATEMENT

of

GEORGE SUNDERLAND
SENIOR COORDINATOR
CRIMINAL JUSTICE SERVICES
AMERICAN ASSOCIATION OF RETIRED PERSONS

Before the

SUBCOMMITTEE ON AGING,
SENATE COMMITTEE ON LABOR & HUMAN RESOURCES

on

S. 704

" A BILL TO ESTABLISH THE CRIME VICTIM'S
ASSISTANCE FUND"

Washington, D. C.

28 June 1983

MR. CHAIRMAN, and Members of the Committee:

We appreciate the opportunity to speak in support of S.704, and to discuss briefly some of the findings of the American Association of Retired Persons with respect to the victimization of older Americans. Beginning as early as the 1970's the Association has been examining these issues and we have developed and implemented a number of programs and activities directed toward educating our members and other older persons about ways in which they can initiate action to reduce criminal opportunity, and their risks of being victimized.

Victimization of the elderly came into prominence in the last part of the decade of the 1960's, when AARP surveys and other national studies began to reveal crime as the second greatest concern of older persons, second only to income maintenance. Some surveys in major urban areas reported crime as the number one concern of the urban poor and elderly.

In the ensuing years, there has been considerable additional research, and as a result of this there has developed a great deal of controversy as to whether or not the elderly are the most or the least victimized. And the answer to this question is that they are the most victimized by certain crime types in specific localities, and the least victimized by other crime types, again depending upon where they are. Generally speaking, older people have lower rates of victimization by the very serious crimes of murder, rape and aggravated assault, but they suffer higher rates than younger age groups in the crimes of purse snatch, swindling, pickpocket, theft of checks from mailboxes, and in some locations, burglary.

The older age group have specific concerns and vulnerabilities just as do other age groups. For example, older people are targets of swindlers because very often they have "nest eggs" or proceeds from life insurance or lump sums from sales of their residences. Such is not often the case for the very young group. Since there are substantially more older women than older men, and since some of them do have readily available cash, they become the targets of con men. Concerning theft of checks from the mailbox, the elderly tend to be victimized because they are the most frequent recipients of pension, annuity or other kinds of checks that are mailed. This creates even more opportunity and results in their higher victimization. Older women are more frequently the victims of purse snatch because the offender is most often a young male who can outrun or out-maneuver an older person.

There are perhaps seventeen factors contributing to the level of victimization of older persons; but there are two that are worthy of comment here. These have to do with the older persons' life-style--natural and/or imposed. The natural lifestyle of older persons tends to reduce their vulnerability. Some examples of this are that they are less likely to hitchhike than are younger age groups, less likely to pick up strangers in a tavern, less likely to be alone on the streets during the late night hours. The imposed lifestyle has far more insidious implications in that criminal victimization whether actual or vicarious, raises justified levels of fear, leading to greatly reduced activity, making the elderly less "at risk" than younger age groups. The elderly change their habits or routines so as to avoid dangerous situations or potential victimization. This, in turn, leads to increased isolation and the deprivations flowing therefrom. Many researchers, perhaps most of them, deal only with frequency of victimization and not with its impact. The economic, psychological and sociological impacts must be considered. Sometimes, the intangible impact, such as the psychological trauma, may be greater than the tangible impacts, that is, economic and physiological. Nonetheless, the minimum that can be done is compensation for older victims' losses resulting from crime.

In recent decades, the victim has become the forgotten element in the Criminal Justice System. Our crime statistics are offender oriented. The taxpayer's money is poured into programs for the offender. Public service organizations come forth to plead the case of the offender. And the victim is forgotten and thrice victimized -- initially by the criminal, next by the cavalier treatment received within the system, and lastly by the tax collector so as to provide more funds for offender programs. Only very recently have books been written on victims as principal subjects, and the science of victimology has just barely reached its adolescence.

For too long the victim of crime has been neglected in our judicial process. Anyone who follows the victim's path through this tortuous and directionless maze is stricken by the fact that the victim is almost an unwanted actor, a bit player in the plot being developed in the drama. In fact, in the vast majority of cases the victim is unessential and goes unnoticed and unnotified.

Most crime does not come to the attention of the police. Of the crime that does, only a minute portion ever goes to trial. The victim does not become a part of the process in the overwhelming majority of cases. Most of the criminals who are apprehended enter into an agreement to avoid the uncertainties of the criminal trial and to receive a favorable bargain. The victim is not an essential element, not needed, not considered, not consulted and rarely even notified. This was succinctly summed up by Assistant U.S. Attorney General, Lois Herrington, after chairing the President's Task Force on Victims. Her statement was "Every one of the victims who testified at our six field hearings said they would never again get involved with the criminal justice system. It is clear that if we take the justice out of the system, we have a system that serves only the criminal."

During the early years of the development of our Criminal Justice System, "making the victim whole," was paramount; that is, consideration for the victim over the offender, a general compassion for the victim and the relentless pursuit of the offender. I would not presume precisely to describe attitudes prevalent in the past century but, if daily journal reports of the period are indicative, the press sympathized with the victims, urged the sheriff on to full pursuit of the offenders and lauded the courts for swift and sure punishment. Why the victim has fallen into obscurity today is subject to much conjecture but it is observable and now becoming the center of comment. The Report of the President's

Commission on Law Enforcement and Administration of Justice noted "One of the most neglected subjects in the study of crime is victims: the persons, households, and businesses that bear the brunt of crime in the United States."

Let us hope we are seeing the dawn of a new era during which the victim will become the principal actor who will receive the attention rightly due, be made whole by money or service, become the focus of compassion and concern and be restored the rights so long deprived.

In our early development restitution was fundamental to the settlement of a criminal complaint. Now it is almost totally forgotten. Volumes could be written on the reasons advanced as to why restitution is not possible in most cases. But fairness demands that offender restitution be restored as a social policy in the United States. It can be done, and must be done. After various objections are overcome, there are those who will seize upon a policy of offender restitution as an opportunity to create a vast new bureaucracy supervising an unprofitable business. Such a development is not necessary. First, if the offender has assets, the restitution can be a money award. Today, most offenders get off free by pleading poverty and by becoming judgment-proof. In such cases, offenders should be made to make restitution by work and service. This can be done without the need of a burdensome administration. A little ingenuity can devise the means. One example came to my attention while I was inspecting a sheriff's program on the West Coast. The sheriff, tiring of seeing nothing done to Juvenile Offenders until they developed into very serious criminals, asked the judge to release delinquent juveniles to his custody for work programs. The judge did so and the sheriff assigned the juveniles to worthwhile public service such as painting public beach property, cleaning up public parks, cutting timber pathways through forests, and other chores needed to entice resort vacationers. The sheriff told me he never had a juvenile so assigned return to the system and that many young people had thanked him for diverting them from minor criminal activities.

Too many so-called "professionals" cite too many objections to restitution programs. Perhaps we should replace such persons with managers who have the initiative to develop innovations that can overcome the obstacles without great investments of public funds.

Given political and social constraints, our options for improving the Criminal Justice System are few. Despite the mountains of money heaped on rehabilitation programs, they have had dismal results. The Director of the Federal Bureau of Prisons has testified before the Congress that we do not know how to rehabilitate a prisoner against his will. Major studies have revealed little, if any, difference between those in and those *not* in our rehabilitation programs.

Searching for the "roots" of crime has been even more elusive. No crime causation theory yet advanced has withstood close scrutiny.

It is past time to turn some of our attention to the innocent victim. The very minimum victims deserve is compensation for losses suffered. The compensation should go beyond repair of personal injuries and should include making the victim whole. There should be no "means" test since criminals cross all economic levels and the affluent innocent victim should not be deprived of restitution nor the criminal allowed to benefit by preying on the rich.

There are a number of professional criminals who make themselves "judgment proof" in order to avoid responsibility. These, often the worst of the criminal lot, should not be allowed to elude responsibility. The alternatives for the judgment proof or indigent should be either payment by service to the community or imprisonment. Ultimately, we should strive to make crime less profitable than the alternatives. An illiterate, untrained street "junkie" today takes in more money to support his drug habit than is earned by 99.9% of the female wage earners in this country. To turn that around, only one-tenth of one percent of our female workers make more money than an ordinary drug addict. The penalty for crime must be greater than the pleasure. Full restitution by the offender, not merely a fine, should be the responsibility demanded of those who choose to profit from crime. It is clear to most observers at the street level that crime is profitable and that the potential rewards outweigh the potential consequences. I am confounded as to why we must conduct a study to arrive at this conclusion, but a study was just recently released on prisoners in Sweden, the ultimate social welfare state, and most prisoners stated they preferred crime over other lines of work.

A noble first step, and a minimum, is compensation paid for through increased criminal fines.

In March, 1982, the AARP Board of Directors discussed again the seriousness of crime in America and the members stated their views in a series of policy statements on significant issues bearing on the subject. Among these statements was the following:

"Work or other forms of restitution by offenders, especially juveniles, should be vigorously explored.

"Restitution by the offender is certainly not stigmatizing. Restitution has proved to be a deterrent to criminal conduct in those instances in which it has been tried. With respect to juveniles, their criminal acts, from vandalism to burglary, seldom lead to the imposition of punishment. In many cases, "first offense" should more accurately be termed "first time apprehended". If a juvenile is apprehended in the act of vandalism, he should be required to make restitution by repairing or restoring the damaged property, or by performing a suitable service to the victim or to the community.

"Unless the juvenile commits a very serious crime little other than superficial action is taken. If a juvenile is adult enough to use a gun, a knife, or other deadly weapon he should be considered and treated as an adult."

Historically, in developing their yearly legislative objectives for consideration of Federal or State legislative bodies, the Association has pressed for:

- adequate indemnification to victims of crime; prosecution programs aimed at career criminals or repeat offenders;
- compilation of detailed and uniform crime statistics, including such items as victim age, so that those crimes to which the elderly fall disproportionally victim will be clearly and accurately identified.
- educational programs based upon research data, to demonstrate ways in which the elderly are victimized by nonviolent economic crimes such as criminal fraud, and to suggest ways they might better protect themselves against fraudulent and deceptive practices; and
- the development of more public information and media programs to educate persons, especially older persons, about simple crime prevention techniques.

The American Association of Retired Persons endorses the legislative proposal before you, and commends the committee for this important effort.

Senator GRASSLEY. I understand your organization has been very helpful to us, so at this point let me thank you for what you have already contributed in working with us.

Does the AARP have any survey information from among your members? I assume it would be from among your members who have been victimized and applied and received assistance?

Mr. SUNDERLAND. Not to my knowledge. And these surveys, Mr. Chairman, are not limited to our members. They are national surveys conducted over the full spectrum of older persons in this country. Understandably, a number of them are AARP members but we try to take a look into the concerns and needs of all older persons. I do not know of any of our surveys, we are just starting a new one and it will be launched 2 weeks from now, that deals with the question you asked. It could be that I could get such questions entered into this upcoming survey.

Senator GRASSLEY. Would you elaborate on a statement that kind of intrigued me on page 6, where you state that "too many so-called professionals cite too many objections to restitution programs."

Mr. SUNDERLAND. Yes, I think that that is observable. Certainly you people who have devoted your life to public service understand that sometimes bureaucrats capture the bureaucracy and do not serve the persons intended to be served.

There are some real problems with the execution of orders of restitution and we recognize that. Many judges object to this because they feel that legislation should not force them to take these actions, it should be a matter of judicial discretion.

Those who are empowered with the responsibility to collect restitution very often find that they can lay that aside and take on the duties that they consider in their mind to be more pressing. We have that problem in criminal fines, an enormous amount of criminal fines are never collected. And the same problem is going to occur with restitution, once restitution is ordered.

I do not intend this to be a flippant statement and I am not too sure that it is practical, but I think if we got a few business managers they would find ways to collect restitution.

Senator **Grassley**. I have just one last question and that is for Mr. Stein. Because we have very little information available regarding the impact of victims compensation programs upon the victims themselves. What in your opinion, does contact with victims compensation programs improve victims' attitudes toward the criminal justice system?

Mr. **Stein**. As you indicated, there is not any research data on that. The impressions that we get are a rather mixed picture, quite frankly.

Senator **Grassley**. Mixed?

Mr. **Stein**. Yes; sad to say, many compensation programs are operated like other public bureaucracies and the experience is not a very pleasant one, as you have raised in earlier questions. There are often very long and tedious and confusing forms to fill out, and there are often overworked and not very sympathetic claims agents to deal with. It is no better and sometimes worse than trying to file a private insurance claim. And as Mr. Zweibel indicated, with somewhere between 60 and 70 percent of all claims being denied by compensation boards across the country, there is a good deal of disappointment that is built in to the process of being an applicant, not to mention the delays and other kinds of frustrations.

I think that there are a number of compensation programs that appreciate these, the sense of disservice that they are conveying to many of the public, and are trying to overcome that. Indications about California trying to speed up its process and simplify its forms along with a number of the efforts that Mr. Zweibel's program has done in New York, are examples.

Nonetheless, I think most of us, most of the observers would be hard pressed to see how the claims process and that experience per se adds much to the law enforcement or criminal justice effort. I think I have overstated that. I guess there are obviously some cases where a sense of gratitude for help was transferred to all the helpers around in the criminal justice system as well as the compensation program. But I think that is at the margin.

Senator **Grassley**. Senator Hawkins.

Senator **Hawkins**. I have no questions. I look forward to working with you in solving this problem. It is of gigantic proportions and it really is striking a low note in the history of this country.

Senator **Grassley**. Well, that concludes this hearing. I thank you specifically and also I think we have had a very good panel, several panels of witnesses.

You ought to look forward to us moving along on this because I think it is something that we will be doing.

So thank you all very much.

This meeting is adjourned.

[Whereupon, the committee recessed, to reconvene subject to the call of the Chair.]

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